# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. [illegible]

[illegible]

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1956**

# No. 84

CENTRAL OF GEORGIA RAILWAY COMPANY, PETITIONER,

*vs.*

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE No. 721, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

## INDEX


| | Original | Print |
|---|---|---|
| Proceedings in the United States Court of Appeals for the Fifth Circuit | 1 | 1 |
| Appellants' designation as to printing record | 1 | 1 |
| Appellants' amended designation as to printing record | 3 | 2 |
| Record from the United States District Court for the Southern District of Georgia | 6 | 3 |
| Complaint | 6 | 3 |
| Exhibit—Proceedings in Case Central of Ga. Railway Co. vs. Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al., Georgia State Court | 21 | 17 |
| Main Exhibit "A"—Petition of Central of Georgia Railway Co., for Declaratory Judgment and Injunction | 24 | 17 |
| Exhibit "A" (also marked "B")—Supplemental Agreement by the carriers and employees with respect to wages and rules, etc., dated 5/25/51 | 33 | 24 |


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INDEX


| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Southern District of Georgia—Continued | | |
| Complaint—Continued | | |
| Exhibit—Proceedings in Case Central of Ga. Railway Co. vs. Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al., Georgia State Court—Continued | | |
| Exhibits—Continued | | |
| Exhibit "B"—Letter, W. J. Collins to B. G. Byington, General Chairman, B. of R. T., dated 8/16/51 | 36 | 26 |
| Exhibit "C"—Letter, B. G. Byington, General Chairman to W. J. Collins, dated 9/1/51 | 38 | 27 |
| Exhibit (not marked)—Affidavit of W. J. Collins, dated 5/26/54 | 39 | 28 |
| Exhibit (not marked)—Temporary Restraining Order, dated 5/26/54 | 40 | 29 |
| Exhibit (not marked)—Order to Show Cause, dated 5/26/54 | 41 | 30 |
| Main Exhibit "B-1"—Exhibit "A"—Memorandum of Agreement, dated 12/21/50 | 42 | 30 |
| Main Exhibit "B-2"—Exhibit "B"—Supplemental Agrement by the carriers and employees with respect to wages and rules, etc., dated 5/25/51 (omitted) | 46 | |
| Main Exhibit "C"—Submission to the National Railroad Adjustment Board by Brotherhood of Railroad Trainmen Central of Georgia Railway Company | 46 | 33 |
| Exhibit "A"—Referee's Decision and Award Headed "In The Matter of a Controversy between Brotherhood of RR. Trainmen and Certain Participating Eastern, Western and Southeastern RR., Carriers of the United States, dated 8/1/51" | 62 | 45 |
| Exhibit "B"—Supplemental Agreement by the carriers and employees with respect to wages and rules, etc., dated 5/25/51 (omitted) | 95 | |
| Exhibit "C"—Letter, G. D. King, Chairman, General Grievance Committee to W. J. Collins, dated 8/2/43 | 95 | 70 |
| Exhibit "D"—Letter, A. M. Sullivan, General Chairman to W. J. Collins, dated 11/17/47 | 96 | 71 |
| Exhibit "E"—Letter, T. E. Temple, General Chairman, et al., to W. J. Collins, dated 9/16/49 | 97 | 71 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Southern District of Georgia—Continued | | |
| Complaint—Continued | | |
| Exhibit—Proceedings in Case Central of Ga. Railway Co. vs. Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al., Georgia State Court—Continued | | |
| Exhibits—Continued | | |
| Exhibit "F"—Letter, W. J. Collins to B. G. Byington, General Chairman, B. of R. T., dated 8/16/51 | 98 | 72 |
| Exhibit "G"—Letter, B. G. Byington, General Chairman to W. J. Collins, dated 8/20/51 | 99 | 73 |
| Exhibit "H"—Letter, B. G. Byington, General Chairman to W. J. Collins, dated 9/1/51 | 101 | 74 |
| Exhibit "I"—Letter, Asst. to Vice-Pres., & Gen. Mgr., to W. E. Dillard, et al., dated 9/5/51 | 102 | 75 |
| Exhibit "J"—Majority Opinion of the Supreme Court of Georgia, dated 1/10/55 | 103 | 75 |
| Summons, issued 2/25/55 | 109 | 80 |
| Marshal's Returns on Complaint, Summons and Temporary Restraining Order | 110 | 81 |
| Motion of Plaintiff, Central of Georgia Railway Co., for Temporary Restraining Order and Preliminary Injunction | 114 | 83 |
| Temporary Restraining Order and Order Assigning Hearing on Motion for Preliminary Injunction, dated 2/24/55 | 117 | 85 |
| Bond for $40,000.00 supporting Temporary Restraining Order and Preliminary Injunction | 119 | 87 |
| Motion of Defendant, Brotherhood of Railroad Trainmen, et al., to Dismiss Complaint and Order Overruling same thereon, dated 2/28/55 | 121 | 88 |
| Transcript of Proceedings On Hearing on Motion to Dismiss | 123 | 90 |
| Statement made by Mr. Miller, Counsel for Plaintiff (omitted) | 124 | |
| Statement made by Mr. Myrick, Counsel for Defendants (omitted) | 124 | |
| Colloquy between Court and Counsel (omitted) | 124 | |
| Statement made by Mr. Miller, Counsel for Plaintiff (omitted) | 124 | |
| Colloquy between Court and Counsel (omitted) | 124 | |
| Stipulation and Agreements about the Petition for Plaintiffs | 124 | 91 |
| Colloquy between Court and Counsel | 125 | 91 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Southern District of Georgia—Continued | | |
| Complaint—Continued | | |
| Evidence for Defendants: | | |
| Testimony of B. G. Byington | 129 | 94 |
| Evidence for Plaintiff: | | |
| Testimony of W. J. Collins | 140 | 102 |
| Colloquy between Court and Counsel | 145 | 106 |
| Evidence for Defendant: | | |
| Testimony of L. E. Chester | 188 | 132 |
| Exhibits: | | |
| Exhibit Plaintiff's #1—Demurrer of Defendant to Petition in Case Central of Georgia Railway Co. vs. Brotherhood of Railroad Trainmen, et al., Georgia State Court | 216 | 147 |
| Exhibit Defendants' #1—Excerpt of Agreements for Wage Increases, etc., May 25, 1951 | 217 | 148 |
| Exhibit Defendants' #2—Opinion and Judgment on General Demurrers in case Central of Ga., Railway Co. vs. Brotherhood of Railroad Trainmen, et al., Georgia State Court, dated July , 1954 | 218 | 149 |
| Colloquy between Court and Counsel | 226 | 154 |
| Exhibit Plaintiff's #1—Demurrer of Defendant to Petition in Case Central of Georgia Railway Co. vs. Brotherhood of Railroad Trainmen, et al., Georgia State Court | 249 | 167 |
| Exhibit Defendants' #1—Agreement for Wage Increase, etc. | 250 | 168 |
| Interim Agreement dated 5/25/51 (omitted) | 251 | |
| Agreement B | 251-A | 168 |
| Agreement A | 251-D | 170 |
| Exhibit "A"—(Eastern Railroads) | 252 | 199 |
| Exhibit "B"—(Western Railroads) | 258 | 204 |
| Exhibit "C"—(Southeastern Railroads) | 264 | 208 |
| Yardmasters Interim Agreement, dated 5/21/51, with Exhibits "A" and "B" attached (omitted) | 266 | |
| Dining Car Stewards—Agreements (omitted) | 266 | |
| Rules submitted by Referee (Air Hose, two classes road service) | 266 | 210 |
| Mediation Agreement, dated 5/25/51 | 270 | 212 |
| Exception from Moratorium: union shop requests (omitted) | 273 | |
| Exhibit Defendants' #2—Opinion Judgment on General Demurrers in case Central of Ga. Railway Co. vs. Brotherhoood of Railroad Trainmen, et al., Georgia State Court, dated 7/29/54 | 273 | 214 |

| | Original | Print |
|---|---|---|
| Record from the United States District Court for the Southern District of Georgia—Continued | | |
| Findings of Fact and Conclusions of Law | 281 | 219 |
| Judgment, entered 3/10/55 | 305 | 237 |
| Bond for $100,000.00 Supporting Preliminary Injunction | 310 | 240 |
| Order entered 3/29/55 extending time for Defendants to file Answer | 313 | 242 |
| Answer of Defendants, Brotherhood of Railroad Trainmen, et al., to Complaint | 313 | 243 |
| Notice of Appeal | 319 | 247 |
| Appeal Bond | 320 | 247 |
| Appellants' Designation of Contents of Record on Appeal | 322 | 248 |
| Order extending time for filing and docketing record on appeal | 323 | 249 |
| Objections to findings of fact, conclusions of law and order | 323 | 249 |
| Clerk's certificate (omitted in printing) | 334 | |
| Argument and submission (omitted in printing) | 335 | |
| Opinion, Hutcheson, C. J. | 336 | 257 |
| Dissenting opinion, Brown, J. | 346 | 264 |
| Judgment | 358 | 276 |
| Petition for rehearing and opposition thereto (omitted in printing) | 359 | |
| Order denying rehearing | 377 | 276 |
| Application for stay of mandate and order granting same (omitted in printing) | 378 | |
| Clerk's certificate (omitted in printing) | 382 | |
| Order allowing certiorari | 383 | 277 |

[fol. 1]

## IN UNITED STATES COURT FOR THE FIFTH CIRCUIT

15671

BROTHERHOOD OF RAILROAD TRAINMEN, Appellant,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY, Appellee

Appeal from Southern District of Georgia

APPELLANTS' DESIGNATION AS TO PRINTING RECORD—
Filed July 1, 1955

The Clerk is requested that all of the record deposited in this Court by the District Court be printed except as to Defendant's Exhibit Number 1. This exhibit is referred to as such in the transcript of the proceedings, which accompanies the record, and is described therein as "May 25, 1951 Agreements for 1. Wage Increases 2. Cost-of-Living Basis for Wage Rate Adjustments 3. Rules Changes applicable to Road Trainmen, Yardmen, Yardmasters, Stewards, Etc. and for 4. 5-Day Work-Week, and Interim 6-Day Work-Week applicable to Yardmen and Yardmasters." The complete exhibit is in the form of a booklet containing a cover page and 93 pages which is with the record on appeal.

Pursuant to Rule 23, of this Court, it is requested that only certain portions of such Defendant's Exhibit Number 1 be printed, to wit: the cover page, Agreement "A", Agreement "B", Exhibit C, Rules submitted to [fol. 2] referee, and Mediation Agreement. These portions requested to be printed are identified on such cover page and references to them are made thereon by specific page numbers. All other portions of the record, except those specifically requested herein not to be printed, are to be printed.

Respectfully submitted, Wayland K. Sullivan.

Address: Standard Building, Cleveland 15, Ohio.

Benning M. Grice, Counsel for appellant Brotherhood of Railroad Trainmen.

Address: Bankers Insurance Building, Macon, Georgia.

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AFFIDAVIT OF SERVICE (omitted in printing)

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[fol. 3] IN UNITED STATES COURT OF APPEALS

[Title omitted]

APPELLANTS' AMENDED DESIGNATION AS TO PRINTING RECORD—Filed July 1, 1955

The Clerk is requested that all of the record deposited in this Court by the District Court be printed except as follows: (1) Pages 1 through 70 of the portion of "A Transcript of The Proceedings," such pages dealing with "Hearing On Motion To Dismiss"; and (2) Defendant's Exhibit Number 1. (This exhibit is referred to as such in the transcript of the proceedings, which accompanies the record, and is described therein as "May 25, 1951 Agreements for 1. Wage Increases 2. Cost-of-Living Basis for Wage Rate Adjustments 3. Rules Changes applicable to Road Trainmen, Yardmen, Yardmasters, Stewards, Etc. and for 4. 5-Day Work-Week, and Interim 6-Day Work-[fol. 4] Week applicable to Yardmen and Yardmasters." The complete exhibit is in the form of a booklet containing a cover page and 93 pages which is with the record on appeal.)

Pursuant to Rule 23, of this Court, it is requested that (1) a portion of such Transcript of Proceedings, to-wit pages 1 through 70 dealing with "Hearing on Motion to Dismiss" not be printed but that the remainder of such transcript be printed, and (2) that only certain portions of such Defendant's Exhibit Number 1 be printed, to wit; the cover page, Agreement "A", Agreement "B", Exhibit C, Rules submitted to referee, and Mediation Agreement, (such portions requested to be printed are identified on such

cover page and references to them are made thereon by specific page numbers.) All other portions of the record, except those specifically requested herein not to be printed, are to be printed.

Respectfully submitted, Wayland K. Sullivan.

Address: Standard Building, Cleveland 15, Ohio.

Benning M. Grice, Counsel for appellants, Brotherhood of Railroad Trainmen, et al.

Address: Bankers Insurance Building, Macon, Georgia.

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[fol. 5] AFFIDAVIT OF SERVICE (omitted in printing)

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[fol. 6] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, SAVANNAH DIVISION

Civil Action No. 797

CENTRAL OF GEORGIA RAILWAY COMPANY,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE No. 721, Brotherhood of Railroad Trainmen, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, and the class of Employees of Central of Georgia Railway Company represented by the foregoing named Defendants

COMPLAINT—Filed February 25, 1955

The complaint of Central of Georgia Railway Company, a Georgia Corporation, respectfully shows:

1

Central of Georgia Railway Company, Plaintiff hereinafter sometimes referred to as the Company, is a corporation chartered under the laws of Georgia, with its princi-

pal office and place of business in Chatham County, Georgia, and is a common carrier of freight and passengers, both in intra and interstate commerce.

2

Plaintiff names herein as Defendants the following:

(a) The Brotherhood of Railroad Trainmen, an unincorporated association with its principal office and place [fol. 7] of business in Cleveland, Ohio, doing business in this County and represented in this County by the Officers of Local Lodge No. 721.

(b) Local Lodge No. 721, Brotherhood of Railroad Trainmen, with its principal office in Chatham County, Georgia, and Z. P. Logan, President, and W. A. Nealey, Secretary thereof, both residents of Chatham County, Georgia.

(c) L. E. Chester, a resident of Florida, individually and as Deputy President of the Brotherhood of Railroad Trainmen.

(d) B. G. Byington, W. B. English, and J. W. Shirley, all of whom are residents of Bibb County, Georgia, individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, who is a resident of Chatham County, Georgia, individually and as officers and members of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway Company.

(e) As a class, approximately 450 trainmen and yardmen employed by the Central of Georgia Railway Company.

3

There are approximately 450 trainmen and yardmen employed by the Company who reside in the States of Georgia, Alabama and Tennessee, and are members of the Brotherhood of Railroad Trainmen. All are severally interested in the matters hereby presented to this Court for adjudication, and there is presented by this petition [fol. 8] a common question of law and fact affecting their several rights and common relief is herein sought. The Defendants named above are, therefore, sued as representatives of the class consisting of all the trainmen and

yardmen employed by the Company. Their selection as defendants will fairly insure the adequate representation of that class.

4

All of the aforesaid Defendants will be hereinafter referred to collectively as the "Union" or the "Defendants", The Brotherhood is the accredited bargaining agent under the Railway Labor Act for all of the trainmen employed by the Company. It has as its representatives the aforesaid Grievance Committee and Local Lodge, as well as others, on the lines of the Company.

5

This Court has jurisdiction of this complaint because this is an action arising under the Constitution and laws of the United States regulating interstate commerce. The amount in controversy exceeds the sum of Three Thousand ($3,000) Dollars, exclusive of interest and costs. The jurisdiction is specifically invoked under the provisions of Title 28 U.S.C. 1331 and 1337. Railway Labor Act Title 45, U.S.C. 151 et seq and the Interstate Commerce Act, Title 49 USC, Sec 1, et seq.

6

On the 26th day of May 1954, plaintiff Company filed a petition for a declaratory judgment and injunctive relief in the Superior Court of Chatham County, Georgia, [fol. 9] against the same defendants named herein, seeking to have the Superior Court of Chatham County, Georgia, take jurisdiction of the matter, to enter a declaratory judgment as to the question of whether or not a certain arbitration award between the parties settled the matter subject to arbitration permanently or whether the matter was settled only for the duration of a certain collective bargaining agreement; seeking a temporary restraining order, an interlocutory injunction and a permanent injunction preventing a strike on this point and enforcing the finality of the arbitration award. A copy of said original petition is hereto attached marked Main Exhibit "A" and by reference made a part hereof.

6

7

By first amendment to the original petition in the aforesaid case, paragraph 6 (a) was added thereto as follows: "The aforesaid arbitration award of Referee George Cheney is hereto attached marked Exhibit "D" and by reference made a part hereof. In preparing said Exhibit "D", plaintiff deleted one section which relates to the 'more than one class of service' problem, which has no direct bearing on this issue."

Said Exhibit "D" to the first amendment is the Cheney Award and will not be attached to this petition as an exhibit because it is shown as sub-exhibit "A" to the submission to the National Railroad Adjustment Board which is hereafter referred to in Paragraph 16 of this petition and which submission is hereto attached marked Exhibit "C" and by reference made a part hereof. The [fol. 10] Cheney Award in said submission has had deleted therefrom the section relating to an immaterial problem and also has deleted Exhibits "A" and "B" of the Cheney Award. However, the Cheney Award attached as Exhibit "D" to the first amendment of the aforesaid suit contained Exhibits "A" and "B" of the Cheney Award, and, therefore, said exhibits are hereto attached and by reference made a part hereof marked respectively Exhibit B-1 and B-2.

8

Th second amendment to the original petition attached as an exhibit a very bulky agreement known as "the Washington Agreement" dated May 25, 1951, between the Brotherhood of Railroad Trainmen and various railroads, including the Central. In order not to overwhelm this record with exhibits, said second amendment will not be set out herein. Said second amendment is not essential to a proper statement of this complaint.

9

Immediately prior to the filing of said petition on May 26, 1954, said petition and a temporary restraining order and Rule Nisi were presented to the Honorable B. B.

Heery, Judge of the Superior Court of Chatham County, Georgia, pro hac vice, for his consideration.

10

On the same day, the Honorable B. B. Heery signed said temporary restraining order maintaining the status [fol. 11] quo restraining a strike, and also signed a Rule Nisi calling upon the defendants to show cause why the prayers of the petition should not be granted. This re-training order and Rule were filed with the petition on the same day.

11

Proper service was made of the petition, restraining order and the Rule.

12

Later, the Union filed a general demurrer to the petition seeking to dismiss the same, both as to the merits and also on the grounds that the Superior Court of Chatham County did not have jurisdiction to hear the controversy. These demurrers came on for argument on July 2, 1954, at which hearing the Union took the position that the Superior Court of Chatham County, Georgia, did not have jurisdiction to enter a declaratory judgment as to the meaning and effect of the arbitration award, and argued further that the meaning and effect of the arbitration award should be referred to the National Railroad Adjustment Board pursuant to the Railway Labor Act, Title 45, U. S. Code Annotated.

13

Then, on July 29, 1954, the Superior Court of Chatham County, Georgia, speaking through the Honorable Davis S. Atkinson, handed down its decision overruling the demurrers of the Union on the question of jurisdiction and holding the petition set forth a proper cause to [fol. 12] be considered by the Superior Court of Chatham County, Georgia. The Court, however, sustained the Union's demurrer as to the merits of the controversy and dismissed the petition.

14

The plaintiff Company in that case, which is also the plaintiff in this action, was granted supersedeas and duly filed its bill of exceptions assigning as error the ruling of the Trial Court on the merits of the case. The Union filed a cross bill of exceptions assigning as error the overruling of their demurrer to the jurisdiction of the Court. The appeal was duly taken to the Supreme Court of Georgia.

15

The argument of both the bill of exceptions and the cross bill of exceptions was heard before the Supreme Court of Georgia at which hearing the Union reiterated their argument that the controversy set forth in the petition was not one which should have been submitted to the Superior Court of Chatham County but was one which should have been submitted to the National Railroad Adjustment Board under the Railway Labor Act.

16

The Supreme Court of Georgia took the matter under advisement. Then, on January 10, 1955, in cases No. 18748 and 18749, Central of Georgia Railway Company vs. Brotherhood of Railroad Trainmen, et al., and vice versa, speaking through the Honorable Justice Hawkins, [fol. 13] the Supreme Court handed down its decision reversing the judgment of the Trial Court on the question of jurisdiction and holding that the controversy submitted in the petition should have been referred to the National Railroad Adjustment Board pursuant to the Railway Labor Act and that the Superior Court of Chatham County did not have jurisdiction to interpret the meaning and effect of the arbitration award. The Honorable Justices Wyatt and Mobley dissented. A copy of the majority opinion of the Supreme Court of Georgia in this case is hereto attached and by reference made a part hereof. It is designated as Exhibit "J" to the submission to the National Railroad Adjustment Board, which submission is hereto attached marked Exhibit "C".

17

Before the remittitur was made the judgment of the Trial Court, the Central of Georgia Railway Company, in compliance with the aforesaid decision of the Supreme Court of Georgia, submitted to the National Railroad Adjustment Board, pursuant to the Railway Labor Act, the identical controversy which it had previously submitted to the Superior Court of Chatham County, Georgia. This submission was made to the National Railroad Adjustment Board because the Supreme Court of Georgia had ruled that this should be done. This submission was transmitted to the Honorable J. M. MacLeod, Executive Secretary, First Division, National Railroad Adjustment Board, 39 South LaSalle Street, Chicago, Illinois, by the Director of Personnel of the Central of Georgia Railway Company, on behalf of the Company, in letter dated January 18, 1955, all in accordance with the Railway Labor Act. [fol. 14] Copies of the submission were served on the duly designated representative of the defendants, B. G. Byington, General Chairman, Brotherhood of Railroad Trainmen, P. O. Box 869, Macon, Georgia, as is required by the Railway Labor Act.

18

This submission was duly acknowledged, docketed and filed by the First Division of the National Railroad Adjustment Board and is now in the process of administrative consideration as prescribed by the Railway Labor Act. A copy of said submission together with its exhibits is hereto attached marked Exhibit "C" and by reference is made a part hereof.

19

The remittitur from the Supreme Court of Georgia in the aforesaid appeal has been received by the Clerk of the Superior Court of Chatham County, Georgia, and an order has been entered by the Judge of the Superior Court of Chatham County, Georgia, dismissing the aforesaid case for want of jurisdiction. This judgment also dissolved the restraining order which held the matter in status quo pending the appeal and which prohibited the defendants from striking on the matter in controversy.

20(a)

Then by letter dated January 28, 1955, the Defendant Union by and through Defendant B. G. Byington, General Chairman of the Local Lodges of Defendant Brotherhood of Railroad Trainmen on the Central of Georgia Railway [fol. 15] property, addressed the Executive Secretary of the National Railroad Adjustment Board, acknowledging that the National Railroad Adjustment Board had filed and docketed the submission of this dispute. Said letter also acknowledged that the National Railroad Adjustment Board had directed the Brotherhood to answer the submission of the Central of Georgia Railway Company by not later than February 23, 1955. In said letter Defendant Union requested that the National Railroad Adjustment Board grant an extension of thirty days from February 23, 1955, within which Defendant Union would be required to answer said submission. The National Railroad Adjustment Board by letter dated January 31, 1955, addressed to said Defendant, B. G. Byington, granted said request.

20(b)

Notwithstanding this request for additional time within which to answer the matter pending before the National Railroad Adjustment Board, Defendant Union, by and through Defendant L. E. Chester, on the 14th day of February 1955, addressed the following telegram to W. J. Collins, Director of Personnel, Central of Georgia Railway Company, Savannah, Georgia, and the same was received:

> "In accordance with my statement to you at the conclusion of our conference of February 9th please consider this as formal notice that a strike of the employees we represent on your property is being set for 6 o'clock Friday morning February 18th subject to a satisfactory settlement of the pending hose coupling issue. Should you desire further conferences con- [fol. 16] cerning this matter call me at the Savannah Hotel and I will be pleased to meet with you."

21

Thereafter on the 16th day of February 1955, the National Mediation Board sent the following telegram to W. J. Collins, Director of Personnel, Central of Georgia Railway Company, Savannah, Georgia:

> "Board hereby authorizes its mediation services under provisions of Section 5 first paragraph B in dispute between BRT and Central of Georgia Railway on which organization has set strike date of 600 AM Friday February 18, 1955. This dispute has been given Docket No. A-4755. Mr. Kennedy is requested to postpone strike date pending mediation. Please acknowledge joint Collins and Kennedy."

22

Then on February 16, 1955, the National Mediation Board wired Director of Personnel, W. J. Collins, Central of Georgia Railway Company, Savannah, Georgia, as follows:

> "We have received this date following telegram from W. P. Kennedy President BRT quote Reurtel Case A-4755. Have instructed Vice President Chester to postpone strike date Central of Georgia Railway pending mediation proceedings unquote."

23

Thereafter said strike date was postponed pending mediation. The services of the National Mediation Board were invoked but the parties did not reach an agreement [fol. 17] through such services. In accordance with the Railway Labor Act, Title 45 U.S.C.A. § 155, the mediator endeavored to induce the parties to submit their controversy to arbitration. The Central of Georgia Railway Company was agreeable to arbitration but Defendant Union refused to submit the matter to arbitration.

24

Now the Defendants will not agree to leave the matter in status quo pending a decision of the controversy by

the National Railroad Adjustment Board, although at the instance of said Defendants the Supreme Court of Georgia held that said Board is the proper forum to decide the controversy. While the submission of this question is pending before the National Railroad Adjustment Board as a result of the position taken by the Defendants in the State Court proceeding, the Defendants have called a system-wide strike against the Central of Georgia Railway Company to compel and coerce said Company to adopt the Defendants' alleged interpretation of said Arbitration Award, which interpretation would permit a reopening of this issue and a negotiation of a rule thereon.

25

If said strike becomes effective, it will completely close down the operations of the Central of Georgia Railway Company. This will result in a complete cessation of freight and passenger service by the Central of Georgia Railway Company to the vital area which it serves. Said strike will also greatly impede, if not completely stop, the movement of valuable commodities in intra and interstate commerce in the area served and areas beyond. [fol. 18] The Central will not be able to move shipments of property for the defense of the United States, which movement could be vital to the national security of our nation.

26

Said strike will result in irreparable financial loss to the Central of Georgia Railway Company. It will divert patrons of the Central to its competitors, a damage which is incapable of measure. It will result in damages to the Central in many other ways which cannot be compensated for through a money judgment or calculated in terms of money. It will result in irreparable injury to the general public, to the shippers and passengers served by the Central and to the nation at large.

27

There is no adequate remedy prescribed by any law, including the Railway Labor Act, whereby this relief can

be granted by either the National Mediation Board, the National Railroad Adjustment Board or any other administrative body. The Courts are the only bodies which have the injunctive powers necessary to maintain the status quo in this case. The jurisdiction of the Court of equity is required. The Central of Georgia Railway Company has no adequate remedy at law.

28

The claims of the Defendants which they are seeking to enforce by strike are not of such relative value to them [fol. 19] as would justify the strike and the resultant irreparable injury to the Central of Georgia Railway Company and to the general public. The Defendants can await the outcome of the decision of the National Railroad Adjustment Board without suffering irreparable damages.

29

The only point that the Central of Georgia seeks to have decided by the National Railroad Adjustment Board and the only point in controversy in this case, is whether or not a certain arbitration award settled the controversy submitted to arbitration permanently or whether such controversy was subject to being renegotiated at the pleasure of the Union after a limited period of time. The controversy submitted to arbitration involves only the question of whether or not the defendant Trainmen employed by the Central of Georgia should be required as one of their basic duties for which they are compensated by their basic daily wage to couple and uncouple air, steam and signal hose. The position of the Union is that the award was temporary in nature and that a contract should be negotiated in which the trainmen are to be paid extra compensation for performing this duty, taking the position that this duty is not one of the basic duties of a railroad trainmen. The Central takes the position that the Cheney Award decided once and for all that the coupling and uncoupling of air, steam and signal hose is a basic duty of the trainmen and is compensated by the basic daily wage; and that the Union agreed to such arbitration . . . cannot now avoid the consequences of their contract.

30

[fol. 20] Nothing in the Central's original suit, its submission to the National Railroad Adjustment Board, nor in this instant petition seeks to hinder, impede, or prevent the defendant Union and its members from seeking higher wages, fringe benefits or any other demands that they might wish to make. The Central is not seeking to enjoin a strike on any of these points. The Central is merely seeking herein a restraining order of an equity Court of competent jurisdiction to enforce a contract and arbitration award and to protect the company and the general public from irreparable injury pending a determination of the legal effect of the aforesaid arbitration submission and award. This United States District Court, a forum of general equity jurisdiction, clothed with all equity powers, has jurisdiction to prevent irreparable injury by preserving the status quo through injunctive relief pending a determination of this controversy by the National Railroad Adjustment Board.

31

To do equity, plaintiff Company holds itself ready, without prejudice to its position, to keep such records and post such bond as may be prescribed by this Court pending a final determination hereof.

32

In the event that the National Railroad Adjustment Board declines to take jurisdiction of this controversy, or in the event that an erroneous award is entered by said Board, the continued jurisdiction of this contro-
[fol. 21] versy by this Court is requested in order that this matter may be finally determined and adjudicated.

Wherefore, Central of Georgia Railway Company, plaintiff herein, respectfully prays as follows:

1. This Court take jurisdiction of this controversy.
2. That process issue in terms of the law.
3. That a temporary restraining order issue, temporarily restraining and enjoining the named individual Defend-

ants, the Brotherhood of Railroad Trainmen, the Local Lodge No. 721 of the Brotherhood of Railroad Trainmen, and each member of the class represented herein, to-wit, each and every employee of the Central of Georgia Railway Company within the craft represented by the Brotherhood of Railroad Trainmen, from endeavoring to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951, and from endeavoring to negotiate or from demanding a rule with the company prescribing extra compensation to Defendant class of employees for coupling and uncoupling air, steam or signal hose; and further, from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and [fol. 22] uncoupling hose, in addition to their normal wage as compensation.

4. That this Honorable Court grant a preliminary injunction containing the same restraining provisions as prayed for in prayer number 3 above in the aforesaid temporary restraining order.

5. That the Brotherhood of Railroad Trainmen, an unincorporated association with its principal office and place of business in Cleveland, Ohio, doing business in this County and represented in this County by the officers of Local Lodge No. 731, Local Lodge No. 721, Brotherhood of Railroad Trainmen, with its principal office in Chatham County, Georgia, and Z. P. Logan, President, and W. A. Nealey, Secretary hereof, both residents of Chatham County, Georgia, L. E. Chester, a resident of Florida, individually and as Deputy President of the Brotherhood of Railroad Trainmen, B. G. Byington, W. B. English, and J. W. Shirley, all of whom are residents of Bibb County, Georgia, individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, who is

a resident of Chatham County, Georgia, individually and as officers and members of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway Company, be continuously restrained and enjoined from endeavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney, dated August 1, 1951, and further restrained and enjoined from endeavoring to negotiate or from demanding a rule with the Company prescribing extra compensation to Defendant class of employees for coupling and uncoupling air, steam or signal hose; and further, [fol. 23] from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and uncoupling hose, in addition to their normal wage as compensation, until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act, and until this matter is finally determined, all pending further order of this Court.

6. That this Court retain jurisdiction of this cause pending the decision of the National Railroad Adjustment Board and the exhaustion of the administrative procedure prescribed in the Railway Labor Act for the purpose of adjudicating this controversy in the event the National Railroad Adjustment Board declines to take jurisdiction or enters an erroneous award; and for the purpose of granting any other and further relief required in the premises.

(S.) John B. Miller, Counsel for Plaintiff, Central of Georgia Railway Company.

P. O. Box 642, Savannah, Georgia.

[fol. 24] MAIN EXHIBIT "A"

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA, SEPTEMBER TERM 1954

No. ——

CENTRAL OF GEORGIA RAILWAY COMPANY,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE No. 721 Brotherhood of Railroad Trainmen and Z. P. Logan, President and W. A. Nealey, Secretary thereof; L. E. Chester, Individually and as Deputy President of Brotherhood of Railroad Trainmen; B. G. Byington, W. B. English and J. W. Shirley, Individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, Individually and as a member of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway.

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTION

The petition of Central of Georgia Railway Company respectfully shows:

1. Central of Georgia Railway Company, hereinafter called the "Railway Company", is a corporation chartered under the laws of Georgia, with its principal office and place of business in Chatham County, Georgia, and is a common carrier of freight and passengers.

2. Petitioner names as defendants herein the following: [fol. 25] (a) The Brotherhood of Railroad Trainmen, hereinafter called the "Brotherhood", which is an unincorporated association with its principal office and place of business in Cleveland, Ohio, but which has its Deputy President, L. E. Chester, presently within the jurisdiction of this Court.

(b) Local Lodge No. 721, Brotherhood of Railroad Trainmen, with its principal office in Chatham County, Georgia, and Z. P. Logan, President and W. A. Nealey, Secretary thereof, both residents of Chatham County, Georgia.

(c) L. E. Chester, a resident of Florida, individually and

as Deputy President of the Brotherhood of Railroad Trainmen.

(d) B. G. Byington, W. B. English and J. W. Shirley, all of whom are residents of Bibb County, Georgia, individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, who is a resident of Chatham County, Georgia, individually and as a member of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway.

3. The Brotherhood is the accredited bargaining agent for all of the trainmen employed by the Railway Company. It has a Grievance Committee and local Lodges on the lines of the Railway Company.

4. There are approximately 450 trainmen and yardmen employed by the Railway Company who reside in the States of Georgia, Alabama and Tennessee, and are members of the Brotherhood of Railroad Trainmen. All are [fol. 26] severally interested in the matters hereby presented to this Court for adjudication, and there is presented by this petition a common question of law and fact affecting their several rights and common relief is herein sought. The defendants named in Section 2(b), 2(c) and 2(d) above are, therefore, sued as representatives of the class consisting of all the trainmen and yardmen employed by the Railway Company who are members of the Brotherhood. Their selection as defendants will fairly insure the adequate representation of that class.

5. In 1950 all of the Class I Railroads of the United States, including Central of Georgia Railway Company, and all of the Operating Brotherhoods, including the Brotherhood of Railroad Trainmen, bargained for months over certain matters. They failed to reach an agreement. The Mediation Board was called in in accordance with the provisions of the Railway Labor Act, but failed to bring the disputants together or to persuade them to arbitrate. Thereupon, in accordance with the provisions of the Railway Labor Act, the President of the United States appointed an Emergency Board, which made its findings. The Brotherhoods declined to accept those findings and asked the President to take control of the railroads. On December 21, 1950, the railroads and Brotherhoods in-

volved in said dispute agreed upon a memorandum in which they set forth certain questions as to which they would continue to bargain. This memorandum includes, in Section 5, the words "Settle following Rules: * * * More than one class of service * * * air hose (Conductors and Trainmen)". On May 25, 1951, they reached an agreement covering wage increases, cost-of-living basis for wage [fol. 27] rate adjustments and rules changes applicable to road trainmen, yardmen, yardmasters, stewards, etc. and for a 5-day work-week and interim 6-day work-week applicable to yardmen and yardmasters, but did not agree upon the two questions just referred to, viz., "More than one class of service" and "Air hose (Conductors and Trainmen)". As to these two disputes they entered on the same date into a supplemental agreement, a copy of which is hereto attached marked Exhibit "A", under which the disputes with respect to coupling and uncoupling air, signal and steam hose, and with respect to more than one class of road service would be submitted to a Referee to be appointed by the President of the United States, and they also agreed that "the decision of the Referee shall be final and binding on the parties".

6. The President appointed as Referee George Cheney, Esquire, who held hearings, and on August 1, 1951 promulgated the following award with respect to the dispute involving coupling and uncoupling air, signal and steam hose:

> "A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: 'Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such [fol. 28] rules, agreements, interpretations or prac-

tices shall be changed to provide for the payment of only 95 cents.

"'Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date' ".

In the same award he said, referring to both disputes:

"The Decisions and award of the undersigned Referee upon the two (2) issues appearing in the ancillary agreement dated May 25, 1951, and which was signed by the parties to this proceeding, shall be final and binding upon said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committee of his Decision and Award, and each Carrier shall make its election within such period, in accordance with the savings clause provisions of the proposed rules".

7. The award as to "More than one class of road service" is not here involved. The question involved in the dispute as to "coupling and uncoupling air, signal and steam hose" was whether or not the trainmen were to be given extra pay for coupling and uncoupling air, signal and steam hose. These were services which the members of the Brotherhood had been performing on Central of Georgia Railway Company's line without extra compensation for many years. As to this dispute, the Referee in effect ruled that there should be no prohibitions [fol. 29] or restrictions on the performance of this work by yardmen but that no payment for the work would be made except where rules, agreements, interpretations or practices already required payment for those services and in those cases the maximum payment should be only 95 cents. The Referee further provided that individual Carriers might elect to either accept his rule or retain their present rules or practices without modification by giving notice prior to September 1, 1951.

8. On August 16, 1951, the Railway Company notified

the Grievance Committee of the Brotherhood that the Central "desires to and will retain its present practices without modification with respect to Item (1) above", which is the item concerning coupling and uncoupling, and on September 1st the Chairman of the Grievance Committee and General Chairman, Defendant Byington, replied agreeing that no further handling of the matter was necessary and stating that the Brotherhood accepted the award. (Copies of these two letters are hereto attached marked Exhibits "B" and "C" respectively).

9. Notwithstanding the contractual agreement in the supplemental agreement of May 25, 1951 (Exhibit "A") that the decision of the Referee should be final and binding on the parties and notwithstanding the provision of the Referee's award to the same effect and notwithstanding the very great and valuable benefits which the members of the Brotherhood of Railroad Trainmen had secured under the agreement of May 25, 1951 providing for wage increases, cost-of-living basis for wage rate adjustments, rules changes, and 5-day work-week and an interim 6-day [fol. 30] work-week, the Brotherhood, on November 28, 1953, submitted to Central of Georgia Railway Company under the terms of the Railway Labor Act "and the current agreement" formal notice of their demand for $1.50 a day for coupling hose, notwithstanding the finding of the Referee, by which they were bound, that on railroads which, like the Central of Georgia, had no contract or practice providing for any such payment, no such payment should be made. The parties negotiated over this demand and were unable to agree. The Mediation Board was called in and on May 21, 1954 the Mediator reported that his efforts had been unsuccessful and requested arbitration under Section 5 First of the Railway Labor Act. Arbitration was rejected by the Brotherhood.

10. On May 25, 1954, the Railway Company received the following telegram from the Secretary of the National Mediation Board:

> "Following telegram received today from Brotherhood of Railroad Trainmen: Quote Have authorized train and yardmen withdrawn from service Central of Georgia Railway at 5:00 PM Friday May 28, 1954

unless matters in dispute satisfactorily adjusted prior to that time Unquote. Please wire statement."

11. The Railway Company contends that the award of the Referee declining to allow additional pay to the members of the Brotherhood for coupling hose was a final award binding on both parties, and that the Brotherhood cannot now seek to avoid the consequences of that award, to which it agreed, by demanding that a rule on that subject, which has never been in the contract between the Rail- [fol. 31] way Company and the Brotherhoods and which would be contrary to and in direct violation of the award of the Referee, be now written into the contract. The defendant Brotherhood contends that the award of the Referee is no longer binding and final or is subject to change at the demand of the Brotherhood. If it is not resolved before 5:00 PM Friday, May 28th, 1954, the trainmen and yardmen employed on the Central of Georgia Railway Company will then strike.

12. The Railway Company has therefore filed this petition seeking a declaratory judgment defining the rights and duties of the parties under Referee Cheney's award, declaring that said award is final and binding and not subject to change, modification or negotiation at the demand of any party. Said declaratory judgment is required to direct the parties in their future negotiations. The Railway Company seeks a temporary restraining order to prevent the called strike pending an adjudication of this controversy, and seeks a permanent injunction to enforce said judgment and prevent irreparable injury.

Wherefore, waiving discovery, Petitioner prays:

1. That process issue in terms of the law.

2. That the named defendants individually; the Brotherhood of Railroad Trainmen; the local Lodge No. 721, Brotherhood of Railroad Trainmen; and each member of the class represented herein, to wit, each and every employee of the Central of Georgia Railway Company represented by the Brotherhood of Railroad Trainmen, be temporarily restrained and enjoined from endeavoring to

[fol. 32] negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951; and further from calling a strike or striking on the lines of the Central of Georgia Railway Company because of the Central of Georgia Railway Company's failure and refusal to acquiesce in their demands for a special arbitrary payment in addition to their normal wage as compensation for coupling and uncoupling air, signal and steam hose, or because the Central of Georgia Railway Company fails or refuses to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney dated August 1, 1951; until further order of the Court.

3. That a Rule Nisi issue calling upon the defendants to show cause why the prayers of the petition should not be granted.

4. That this Honorable Court declare the rights and other legal relations of the parties to the controversy holding that the said award of Referee George Cheney, Esquire, dated August 1, 1951, is final and binding on the parties and is not subject to further negotiation, change, cancellation, modification or revision.

5. That the Brotherhood of Railroad Trainmen, the local Lodge No. 721, Brotherhood of Railroad Trainmen, and each member of the class represented herein, to wit, each and every employee of the Central of Georgia Railway Company represented by the Brotherhood of Railroad Trainmen, be permanently restrained and enjoined from endeavoring to negotiate a cancellation, change, modification or revision of the award of Referee George Cheney, dated August 1, 1951; and further from calling a strike or [fol. 33] striking on the lines of the Central of Georgia Railway Company because of the Central of Georgia Railway Company's failure and refusal to acquiesce in their demands for a special arbitrary payment in addition to their normal wage as compensation for coupling and uncoupling air, signal and steam hose, or because the Central of Georgia Railway Company fails or refuses to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951.

6. For any other and further relief required in the premises.

(S.) A. R. Lawton, (A. R. Lawton), John B. Miller, (John B. Miller), Counsel for Central of Georgia Railway Company.

P. O. Box 527, Savannah, Georgia.

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EXHIBIT "A"

"Exhibit B"

85026

Agreement

BRT Referee

This Agreement made this 25th day of May, 1951, by and between the participating carriers listed in Exhibits A, B, and C, made a part hereof, and represented by the Eastern Western and Southeastern Carriers' Conference [fol. 34] Committees, and the employees shown thereon and represented by the Brotherhood of Railroad Trainmen through their conference committee.

Witnesseth: This Agreement is supplemental to an agreement entered into this same date by the carriers and employees parties hereto with respect to wages and rules of road and yard service employees.

Article I:

The parties are in dispute with respect to the following:

(1) Coupling and uncoupling Air, Signal and Steam Hose.

The parties are agreed that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for decision.

(2) More than One Class of Road Service.

The parties are agreed that the dispute as to the wording of this rule shall be submitted to a referee to be

appointed by the President of the United States for decision.

Article 2:

The proceedings before the referee shall be commenced in Washington, D. C., on June 25, 1951.

Article 3:

The decision of the referee shall be final and binding on the parties, and shall become effective thirty (30) days [fol. 35] from the expiration of the date the referee notifies the carrier and employee committees of his decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

For the Participating Carriers Listed in Exhibit A: L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers listed in Exhibit B: D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

For the Participating Carriers Listed in Exhibit C: W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hood, Jr.

[fol. 36] For the Employees Represented by the Brotherhood of Railroad Trainmen: W. P. Kennedy, President, Brotherhood of Railroad Trainmen, W. E. B. Chase, Vice President, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jennings, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, J. J. Klein, Member, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

EXHIBIT "B"

Aug. 16th, 1951.

Mr. B. G. Byington,
General Chairman, B. of R. T.,
Room 202 Professional Building,
Macon, Ga.

Dear Sir:

Referring to Referees Decision and Award of August 1st, 1951, upon the following matters,

(1) Coupling and uncoupling Air, Signal and Steam Hose

[fol. 37] And

(2) More than one class of Road Service.

In accordance with this decision and award you are hereby advised that the Central of Georgia Railway Company desires to and will retain its present practices without modification with respect to Item (1) above.

As to Item (2) above the said Railway Company desires to and will accept the rule as contained in the award of the Referee effective September 1st, 1951, and which includes questions and answers as to proper application of said rule by the referee.

Please acknowledge receipt of this letter.

Very truly yours, W. J. Collins, Asst. to Vice Pres. & General Manager.

[fol. 38] EXHIBIT "C"

B. G. Byington, Chairman, W. B. English, Vice Chairman,
J. W. Shirley, Secretary

Brotherhood of Railroad Trainmen, General Grievance Committee

Central of Georgia Railway, Room 202,
Professional Building, Macon, Georgia

September 1, 1951.

Mr. W. J. Collins, Assistant to Vice Pres. and
General Mgr.,
Central of Georgia Railway,
211 Terminal Building, Macon, Georgia.

Dear Sir:

With further reference to yours of August 6 relative to:

1. Coupling and uncoupling air, signal, and steam hose and,
2. More than one class of road service.

[fol. 39] Please be advised that your understanding as to any further handling not being necessary is correct, and there will be no need for any further handling as I now understand that the Cheney award is legal and we accept the decision of the Referee.

Yours very truly (S.) B. G. Byington, (B. G. Byington), General Chairman.

BGB/s.

## Exhibit (not marked)

Chatham Superior Court, September Term, 1954

Declaratory Judgment and Injunction

Central of Georgia Railway Company,

vs.

Brotherhood of Railway Trainmen, et al.

### Verification

Georgia,
Chatham County.

Comes Now W. J. Collins, Assistant to the Vice-President and General Manager, and Director of Personnel of the Central of Georgia Railway Company, who, first being duly sworn, deposes and says that the allegations of fact contained in the within and foregoing petition are true and correct.

(S.) W. J. Collins (W. J. Collins).

[fol. 40] Sworn to and subscribed before me this 26 day of May, 1954.

(S.) Catherine I. Papy, Notary Public, Chatham County, Georgia.

EXHIBIT (not marked)

CHATHAM SUPERIOR COURT, SEPTEMBER TERM, 1954

DECLARATORY JUDGMENT AND INJUNCTION

CENTRAL OF GEORGIA RAILWAY COMPANY,

VS.

BROTHERHOOD OF RAILWAY TRAINMEN, ET AL.

TEMPORARY RESTRAINING ORDER

Georgia,
Chatham County.

The within and foregoing petition having been presented, read and considered:

It is considered, ordered and adjudged that said Defendants be and are hereby temporarily restrained and enjoined from endeavoring to negotiate a cancellation, change, modification or revision of the award of Referee George Cheney, dated August 1, 1951, and further temporarily restrained and enjoined from calling a strike or striking on the lines of the Central of Georgia Railway Company until further order of this Court.

In Open Court, this 26th day of May, 1954.

(S.) B. B. Heery, J.S.C.C.C. Pro Hac Vice.

[fol. 41] EXHIBIT (not marked)

CHATHAM SUPERIOR COURT, SEPTEMBER TERM, 1954

DECLARATORY JUDGMENT AND INJUNCTION

CENTRAL OF GEORGIA RAILWAY COMPANY,

VS.

BROTHERHOOD OF RAILWAY TRAINMEN, ET AL.

RULE NISI

Georgia,
Chatham County.

The within and foregoing petition having been presented, read and considered;

It is considered, ordered and adjudged that the Defendants named therein be and are hereby ordered to show cause before the Judge of the Superior Court of Chatham County, Georgia, then and there presiding at ten o'clock A.M., on the 30th day of June, 1954, in the Court Room of said Court in said State and County why the prayers of the petition should not be granted.

So ordered this 26th day of May, 1954.

(S.) B. B. Heery, J.S.C.C.C. Pro Hac Vice.

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[fol. 42] MAIN EXHIBIT B-1

85026

"EXHIBIT A"

MEMORANDUM OF AGREEMENT

Washington, D. C., December 21, 1950.

1. Establish 40 hour week for yardmen with increase of 23 cents effective October 1, 1950, and additional 2 cents effective January 1, 1951.

2. Set aside 40 hour week agreement until January 1, 1952, and establish 6 day work week for yardmen. Effective with the first payroll period after 30 days from the date of execution of the formal agreement, yardmen re-

quired by the carrier to work on 7th day to be paid overtime rates except engineers who shall receive straight time rates for the 7th day. This does not create guarantees where they do not now exist. On and after October 1, 1951, three months' notice to be given of desire to go on 40 hour week. Provide for consideration of availability of manpower and 4 cents per hour if and when the 40 hour week actually becomes effective.

3. Settle rules for 40 hour week and 6 day week.

4. Grant yard conductors and brakemen other rules such as daily earnings minimum, car retarder operators and footboard yardmasters as recommended by Emergency Board No. 81.

[fol. 43] 5. Settle following rules:

Initial Terminal Delay (Conductors and Trainmen).
Interdivisional Runs.
Pooling Cabooses (Conductors and Trainmen).
Reporting for Duty.
More Than One Class of Service.
Switching Limits.
Air Hose (Conductors and Trainmen).
Western Differential and Double Header and Tonnage Limitation (Conductors and Trainmen, all Territories).

6. Roadmen to receive 5 cents per hour increase effective October 1, 1950 and additional 5 cents per hour increase effective January 1, 1951.

7. Quarterly adjustment of wages on basis of cost of living index (1 point to equal 1c per hour. First adjustment April 1, 1951. Base to be 176).

8. Agreement embodying principles applicable to yardmasters to be entered into for benefit of yardmasters.

9. Effective October 1, 1950, the basic hours of dining car stewards shall be reduced from 225 to 205 hours per month; no penalty overtime to accrue until 240 hours have been worked, the hours between 205 and 240 to be paid for at the pro rata rate.

Effective February 1, 1951, overtime at time and one-half shall accrue after 220 hours have been worked. The basic monthly salary to be paid for the 205-hour month shall be the same as that now paid for the 225-hour month.

[fol. 44] Except that four dollars and ten cents ($4.10) shall be added to the present monthly rate effective January 1, 1951.

10. In consideration of above, this agreement to be effective until October 1, 1953, and thereafter until changed or modified under provisions of Railway Labor Act. Moratorium on proposals for changes in wages or rules until October 1, 1953, as follows:

No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950. Provided, however, that if as the result of government wage stabilization policy, workers generally have been permitted to receive so-called annual improvement increases, the parties may meet with Doctor Steelman on or after July 1, 1952, to discuss whether or not further wage adjustments for employees covered by this agreement are justified, in addition to increases received under the cost of living formula. At the request of either party for such a meeting Doctor Steelman shall fix the time and place for such meeting. Doctor Steelman and the parties may secure information from the wage stabilization authorities or other government agencies. If the parties are unable to agree at such conferences whether or not further wage adjustments are justified they shall ask the President of the United States to appoint a referee who shall sit with them and consider all pertinent information, and decide promptly whether further [fol. 45] wage increases are justified and, if so, what such increases should be, and the effective date thereof. The carrier representatives shall have one vote, the employee representatives shall have one vote and the referee shall have one vote.**

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** The foregoing will not debar management and committees on individual railroads from mutually agreeing upon changes in rates, rules and working conditions of employees covered by this agreement.

11. If the parties cannot agree on details of agreement or rules they shall be submitted to John R. Steelman for final decision.

The usual protections for arbitraries, miscellaneous rates, special allowances, and existing money differentials above existing standard daily rates will be included in the formal agreement.

J. P. Shields, Brotherhood of Locomotive Engineers by Grand Chief Engineer, D. B. Robertson, Brotherhood of Locomotive Firemen and Enginemen by President, R. O. Hughes, Order of Railway Conductors by President, W. P. Kennedy, Brotherhood of Railroad Trainmen by President, L. W. Horning, Chairman, Eastern Carriers' [fol. 46] Conference Comm., D. P. Loomis, Chairman, Western Carriers' Conference Comm., C. D. MacKay, Chairman, Southeastern Carriers' Conference Committee.

NOTE RE EXHIBIT

Exhibit "B"—Supplemental Agreement by the carriers and employees with respect to wages and rules etc., dated 5/25/51 (Same as Exhibit "A"); Omitted from the Printed Record, being heretofore copied at page 33.

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MAIN EXHIBIT "C"

Mr. J. M. MacLeod, Executive Secretary,
National Railroad Adjustment Board,
First Division,
Chicago, Illinois.

Brotherhood of Railroad Trainmen

Central of Georgia Railway Company

Statement of Claim:

It is the claim of the Central of Georgia Railway Company that Referee George Cheney's Award (Exhibit "A") released at Washington, D. C., August 1, 1951 was a final

and binding disposition of the controversy which has existed for many years over the propriety of the performance of the air hose coupling function by yardmen rep- [fol. 47] resented by the Brotherhood of Railroad Trainmen, and that the award is not subject to change, cancellation, revision or modification at the demand of the Brotherhood.

Carrier's Statement of Facts:

This presentation to the First Division of the National Railroad Adjustment Board is the culmination of a series of Court actions in which the Central of Georgia Railway Company has requested the Courts to interpret the meaning of the phrase "final and binding" as it appears in the agreement of May 25, 1951, shown as Exhibit "B", and as it appears in Referee George Cheney's award shown as Exhibit "A". The developments which brought this proceeding into being will be described chronologically.

The earliest record of this controversy being handled officially to the highest officer of this carrier designated to handle claims and grievances indicates that the Brotherhood of Railroad Trainmen first presented under date of August 2, 1943 the complaint of Atlanta yardmen being required to couple air on cuts of cars leaving Industry Yard. (See Exhibit "C".) Their claim that such work "was not in line with their duties" was denied in conference September 30, 1943 and the practice continued.

The question lay dormant until November 17, 1947 when the Brotherhood requested that the switchmen at Macon be relieved of coupling and uncoupling air hose. (See Exhibit "D".) In the meantime, two time tickets, dated November 16, and 17, 1947, were presented in behalf of a switch engine crew for an additional day's pay with the [fol. 48] following notation in the remarks column:

> "This day claimed account coupling air hose on 12 cars for swamp and 10 cars in 401. This is car inspector's work."

This claim was denied at the local level, but it was not progressed to the highest officer of the carrier nor further appealed.

Later, on July 25, 1949, we received four claims all dated July 14, 1949 from the General Chairman of the Brotherhood of Railroad Trainmen claiming an additional yard day "for having to couple air hose in Macon Yard."

These claims were progressed to the highest officer and declined, but they were not appealed further.

Nothing further was heard until September 16, 1949 when the General Chairman of the Order of Railway Conductors and the Brotherhood of Railroad Trainmen requested a conference to negotiate a rule covering the coupling of air hose. (See Exhibit "E"). We continued to receive spasmodically claims from switch engine crews, a few of which claimed 2 hours pro rata with the following notation in the remarks column:

> "Claiming 2 hrs. pro-rata time account of coupling air hose while working Roosevelt Ave. This ticket to run continuously until maximum settlement is reached account of having to couple and uncouple air hose switching Roosevelt Avenue, across street crossings, [fol. 49] and working industries up and down grades. Also coupling and uncoupling air hose while working passenger trains in passenger terminal."

None of the claims were progressed, and the General Chairmen of the Conductors and Trainmen were advised in conference that their request for a new rule was declined, and the issue became involved as a carrier counter-proposal in the so-called 1949 National Wage and Rule movement sponsored by the Conductors and Trainmen. Nothing developed as a result of many months of handling by the several conference committees representing the employees and the carriers, but finally an agreement was reached and signed with the Brotherhood of Railroad Trainmen on May 25, 1951 (See Exhibit "B") to submit the question (Coupling and Uncoupling Air, Signal and Steam Hose) to a neutral referee to be appointed by the President of the United States for decision, and that the decision of the referee shall be final and binding on the parties.

The referee's Decision and Award best explains the proceeding from that point until his decision was rendered and released. Upon receipt of the Decision and Award, we

wrote the general chairman of the Brotherhood of Railroad Trainmen, on August 16th, in accepting the Cheney Decision and Award that we elected to retain our present practices without modification (See Exhibit "F").

The general chairman acknowledged receipt of this letter (Exhibit "G") by his letter of August 20, 1951, in which he implied that further handling was to be given the matter, and we advised him that it was "our position no further handling was necessary since, under the agreement [fol. 50] to arbitrate, it was definitely and positively provided that the award of the referee or arbitrator should be final and binding on both parties and that such award as was rendered shall become effective and a part of the May 25, 1951 agreement. Therefore, under these circumstances, it is not my understanding that there is any further handling to be given but that the rules became effective September 1, 1951."

The general chairman replied under date of September 1, 1951 (Exhibit "H") that the company's understanding was correct and "There will be no need for any further handling as I now understand that the Cheney Award is legal and we accept the decision of the referee". (Emphasis ours). Under date of September 5, 1951 (Exhibit "I") all division superintendents were advised that the air hose coupling controversy had been settled and that we were to make no changes in our policy which was one of ancient standing. Following the Cheney Award, we neither expanded nor retracted our practice of requiring yardmen to couple or uncouple air hose. There the matter stood until November 28, 1953.

On November 28, 1953 the Brotherhood of Railroad Trainmen served notice on the Central of Georgia for ten proposed rule changes, item nine of which read as follows:

> "Amendment to Article 41.
>
> Coupling and Uncoupling of Air and/or Steam Hose, etc.
>
> [fol. 51] "Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid

an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

"As a condition of this arbitrary allowance, said employees may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains."

Lengthy discussions with the General Committee of the Brotherhood followed during the next six months, during which we took the position that the air hose coupling controversy was disposed of by arbitration, and that both the articles of agreement and the neutral referee's decision and award specified that the decision and award was final and binding on the parties, and we declined to grant the request for a rule.

Subsequently, the good offices of the National Mediation Board were sought by the Brotherhood, and Mr. Robert F. Cole was assigned as mediator, with the result that under the threat of strike which was to have commenced at 5:00 P.M. Friday, May 28, 1954, all of the issues in the November 28, 1953 notice were disposed of to the satisfaction of the Brotherhood except item nine, the request for an arbitrary payment for coupling air hose.

The dispute involving the air hose issue was carried into Superior Court of Chatham County, Georgia by the company, in which the Court was asked to interpret the meaning of the words "final and binding" as used in this case. The Brotherhood was temporarily enjoined [fol. 52] from striking, pending the outcome of the Court's decision. In answer to our suit, counsel for the Brotherhood, in their general demurrer, challenged the jurisdiction of the Court and averred the matter was one coming under the jurisdiction of the National Railroad Adjustment Board. The trial Judge overruled the demurrer and took jurisdiction. The decision of the trial Judge was appealed to the State Supreme Court by the company, and the Supreme Court decided that the trial Judge had erred in taking jurisdiction, (See Exhibit "J") and, therefore, the question raised in this dispute with the Brotherhood should be referred to this Board for adjudication.

Statement of Carrier's Position

It is the position of the company that the Decision and Award of Referee George Cheney was a final and binding disposition of the issue, and that the award is not subject to change, cancellation, modification or revision except at the pleasure of the company. This is not to say that the rule requested by the Brotherhood is forever barred from consideration by the company or that the Cheney Award prohibits the making of such an agreement, but it is to say that when an issue is arbitrated under a common law agreement between two parties such as we have here, the decision and award of the arbitrator shall only be altered at the pleasure of the party winning the advantage. No such privilege accrues to the party adversely affected, and we contend it is not proper for the Brotherhood to put the Cheney Award in the category of the general schedule or the provisions of the principal agreement of May 25, 1951, which were subject to a moratorium clause providing [fol. 53] that neither party would serve notice upon the other for a change in rules, wages or working conditions before October 1, 1953.

Referee George Cheney emphasized the consequences of arbitration on page 7 of his decision:

> "Before embracing the present controversy, the Referee further emphasized to both parties that each can only achieve victory on a controversial subject, when they resolve their disagreements by means of collective bargaining. Inherent in the resolution of any controversy by arbitration, is the distasteful circumstance that the position of one adversary must prevail over the position taken by his opponent. Under the latter procedure, it is hardly to be anticipated that even the decision of a non partisan individual such as the present Referee, will be palatable or convincing to the loser."

The moratorium clause in the agreement of May 25, 1951 was not incorporated by reference or otherwise in the referee agreement (Exhibit "B"), made the same date, by means of which latter agreement the parties referred

the air hose dispute to a referee to be appointed by the President of the United States. Instead, the parties expressly provided that the decision of the referee should be final and binding.

The award of Referee Cheney, rendered on August 1, 1951, disposed of a problem which had long plagued the railroad industry generally (this carrier since 1943) and certainly a fair reading of the entire award leaves no doubt that whatever disposition was thus made of the air hose dispute, it was intended to settle the question once and for all.

[fol. 54] Beginning at page 20 of the award, Referee Cheney said:

> "It will be instructive to analyze the Carriers' proposal, and ascertain what changes it will accomplish, if adopted. One of the principal purposes of this proposal appears to be, to put an end to the controversy which has existed for years over the propriety of the performance of the Coupling Function, by members of the Brotherhood of Railroad Trainmen. Such an intention is evident from the first clause of the proposal, reading as follows:
>
> "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work * * *."
>
> "It further appears to this Referee, that the next clause conditionally preserves rather than destroys existing rules, agreements, interpretations and practices currently providing payments (arbitraries), for the performance of the Coupling Function by yardmen but with the qualification that a reasonable uniform ceiling payment be fixed therefor by the referee, which ceiling shall also constitute a minimum floor payment for such work."

continuing to quote

> "The Carriers' proposal also probably is intended to prevent further future extension of the penalty

payments for the performance of this function, through interpretation or construction of existing or future [fol. 55] rules on this subject, unless arbitraries are created therein by clear, express, and unambiguous language."

"As already observed, the last paragraph of the Carriers' proposal unquestionably will enable any individual Carrier if it so desires, to retain its present rule on this subject, in preference to any rule that may be drafted and made effective by the Referee through this Award."

We cannot interpret the May 25, 1951 agreement without being certain that the intent of the parties as expressed therein was to make the arbitration award final and binding on the coupling function, and not subject to the moratorium clause of the principal agreement. That intent is made clear not only by the Referee's award but also by the ancillary agreement. The referee definitely stated: "One of the principal purposes of this award (and also the awarded rule) appears to be, to put an end to the controversy which has existed for many years." This statement cannot be reconciled with the attempt of the organization in this case to vacate the decision and award. The proceeding before Referee Cheney was not an arbitration under the Railway Labor Act. There was neither three nor six arbitrators on the board as prescribed in Section 7, First; the agreement was not drawn up in accordance with Section 8; and the award was not filed in the United States District Court, with the Mediation Board, and the Interstate Commerce Commission as stipulated in Section 7, Third (f). It is plain that this was common-law arbitration and hinges purely and simply on the matter of agency.

[fol. 56] Were the conference committees representing the carriers and the employees proper agents? If they were, and there is no question that they were, did they have a right to submit this question to arbitration? There is no doubt that they were proper agents and there is no question that they had a right to submit the question to arbitration.

Referee Cheney said in his award, (p. 26) "Resolution of this dispute by collective bargaining rather than by arbitration, is precisely what the Referee suggested, but, within twenty-four hours after this suggestion was made, the Referee was informed by a representative of the Brotherhood of Railroad Trainmen, that neither party believed the coupling function issue . . . could be resolved by further collective bargaining among the interested parties. . . . Upon such a state of the record, the Referee must conclude, that it would be expecting the improbable if not the impossible, to assume that further collective bargaining in foreseeable future, would be productive of a final, complete, and nation-wide determination of the Coupling Function dispute."

Surely, therefore, there can be no doubt in the minds of reasonable men that the parties to the proceeding and the referee himslf intended that his decision and award was a final, conclusive settlement of the issue which had kept the parties apart for so long. Certainly there must be some finality to a proceeding of this nature. The clearly expressed intent of all who had any part in this proceeding was to dispose of the subject. Of what use is an arbitration proceeding if immediately after we get an award a thirty day notice can be served under the Railway Labor [fol. 57] Act to set aside an award which was not to be limited to any specific period of time or subject to any express cancellation clause, but instead was to be final and binding. This carrier did not have the slightest inkling of an idea what sort of a rule might have been promulgated by the Carriers' Conference Committees meeting with the employees' representatives, or what kind of a rule Referee Cheney would decide on when the carriers' representative agreed to arbitration, but one can only imagine the position the Brotherhood would be taking now if the award had been more advantageous to it and the carrier was in the position now occupied by the Brotherhood.

This was not a matter of wages. We are fully aware that the position of the carrier would be unsound if the issue had involved the matter of wages in the labor contract. The parties' contentions and the Referee's find-

ings show that the issue was one of job responsibility and not wages. Why is this important? The wage contract is always subject to re-negotiation as provided in the termination clause, but the issue of job responsibility is subject to finality of adjudication.

If the parties had not meant to settle the issue once and for all, why didn't they say so. Why did they use the language "final and binding"? and what is the meaning of such language?

Webster's International Dictionary, 1945 Unabridged, describes "final" as meaning:

> (1) Pertaining to, or occurring at, the end of conclusion; last, terminating, ultimate; as, the final day of a school term.
>
> [fol. 58] (2) Conclusive, decisive, definitive; as a final judgment.
>
> (3) Respecting an end or an object to be gained; related to the purpose or ultimate end in view.
>
> (6) Of an order, decision, judgment, decree, or sentence of a Court, designating: (a) usually, one which ends the action or proceeding in the Court that makes it, leaving nothing further to be determined by the Court, or to be done except the administrative execution of the decision, judgment, etc. Such a judgment does not as such preclude an appeal. It is distinguished from an interlocutory decision, judgment, etc. (b) One which is conclusive as to jurisdiction, and precludes the right to appeal to, or continue the case in, any other Court upon the merits; as, in some minor matters the decisions of the lower Courts are usually made final. This does not preclude the right to take exception to the proceeding as invalid or to take proceedings to set it aside for irregularity, fraud, or mistake. In this sense, final and conclusive is more often used. (c) With reference to the judgments or decrees of the Supreme Court of the United States rendered under the provisions of the statutes giving it jurisdiction over appeals and writs of error, a judgment which terminates the litigation between the parties on the merits, leaving nothing for the inferior

Court to do in case of an affirmance except to execute the judgment or decree.

The Railway Labor Act, itself, Title 45, U.S.C.A., Section 153(m) uses the term "final and binding" in the same sense as used in the Award. It says that decisions of the National Railroad Adjustment Board shall be "final and binding".

[fol. 59] Except for money awards, the Courts hold that "final and binding" means the awards of the National Railroad Adjustment Board are not even subject to judicial review. This shows what "final and binding" means in Railway Labor disputes!

It is not necessary to elaborate on the meaning of the word binding. Surely no one questions or doubts the meaning or intent of the parties in using the word in connection with this dispute. What is now at issue is the finality of the bond made by Referee Cheney.

Finally, what is the status of an award conceived in common law arbitration? Below we cite pertinent legal authorities:

> "An Award must be final as to all matters submitted so that the rights and obligations of the parties are definitely adjusted and fixed.
>
> "Since the object of submitting to arbitration is to obtain such a settlement as will put an end to the dispute and conclude the matters submitted, it is a fundamental rule that an award to be valid must be final and give the parties repose and quiet with respect to all matters submitted. This is true whether the arbitration be a common law or a statutory one."

6 C.J.S. 227, Arbitration and Award Sec. 81a (5).

> "An award, ordinarily, concludes and binds the parties as to the merits of all matters, properly within the scope of the award, and intended by the arbitrators to be finally decided."

[fol. 60] 6 C.J.S. 240, Arbitration and Award Sec. 95.

> "A common law award is binding and conclusive on the parties and their privies."

Rich vs. Turnbull 95 Ga. 752.

> "In an agreement for common law arbitration, such as is recognized in that State (Code Sec. 7-101, et. seq.) the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or in implied consent to do so, as where the dispute is submitted to an arbitrator for final determination and he makes an award accordingly."

Cliett v. Metropolitan Life Inc. Co. 195 Ga. 257, at 265.

> "Awards are to be favored by the Courts, as they are designed to terminate controversies, and they should be sustained when made in conformity to law, unless vicious or defective for some manifest cause, properly made known to the Court."

Culbreth vs. Smith 202 Ga. 102.

> "An arbitration award may be attacked only for fraud, mistake of law, or reference by arbitrator to chance or lot."

Brand vs. Sorrells 61 Ga. 162.

> "An award of arbitrators reduced in writing in plain, unambiguous terms, in the absence of fraud or [fol. 61] mistake, cannot afterwards be shown by the arbitrators themselves, or by parol evidence, to mean other than what is expressed upon its face."

Cobb & Duncan vs. Dortch 52 Ga. 548.

It is clear, therefore, that the issue was submitted to common law arbitration by responsible, well-meaning parties whose agreement evidenced clear intent and desire to achieve finality. This arbitration was not an arbitration under the Railway Labor Act. There is, however, no law that prevents an award under the Railway Labor Act from permanently settling an issue. The Act merely directs that the award specify its duration whether or not permanent.

The rights and relations of the parties under common law arbitration are unmistakably clear, and we urge this board to hold with the carrier and find that the so-called Cheney Award (Exhibit "A") was a final and binding disposition of a dispute involving job responsibility, and is not subject to change, cancellation, revision or modification except at the pleasure of the Carrier.

Oral hearing is requested.

All data herein has been shown to the committee and they are being furnished copies of this submission.

Central of Georgia Railway Company, Director of Personnel.

Savannah, Georgia, January 17, 1955. tp-b.

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[fol. 62] EXHIBIT "A"

In the Matter of a Controversy

between

Brotherhood of Railroad Trainmen,

and

Certain Participating Eastern, Western and Southeastern Railroad Carriers of the United States

Referee's Decision and Award

APPEARANCES:

Mr. L. W. Horning, Representing, Eastern Carriers Conference Committee.

Mr. D. P. Loomis, Representing, Western Carriers Conference Committee.

Mr. W. S. Baker, Representing, Southeastern Carriers Conference Committee.

Mr. W. L. Reed, Mr. Henry Kaiser, Esq., Mr. H. F. Sites, Mr. K. H. Jones, Mr. C. J. Jenkins, Mr. W. E. Grady, Mr. W. T. Jenkins, Mr. E. J. Brady, Mr. C. W. Stanley, and Mr. Harry See, Representing, Brotherhood of Railroad Trainmen.

The present action is a Reference Proceeding, in the nature of an arbitration between certain Participating

[fol. 63] Railroad Carriers and the Brotherhood of Railroad Trainmen. The developments which brought this proceeding into being will be first described.

Developments, Producing the Present Reference Proceeding.

During the month of February, 1949, representatives of the Brotherhood of Railroad Trainmen adopted certain proposals to change the terms of their Collective Bargaining Agreements with the Carriers, relating to wages, hours of work, and the other conditions of employment customarily embodied in the "Rules". Brotherhood notices were served upon the Carriers March 15, 1949, and in turn the Class I Carriers served counter proposals for certain Rule change on the Brotherhood as of March 20, 1949. Bargaining on these subjects began September 22, 1949, but unfortunately became deadlocked December 14, 1949. The good offices of the National Mediation Board were then requested, and mediation by this agency was begun January 16, 1950. The efforts of the National Mediation Board however did not produce a final and complete settlement of all matters in controversy, at that time.

On February 24, 1950, President Truman proclaimed the existence of an emergency resulting from the controversy heretofore described and appointed an Emergency Board pursuant to Section 10 of the Railway Labor Act, to investigate the same. This Emergency Board convened in Chicago March 2, 1950, and began receiving testimony and arguments from the interested parties. Two extensions of time were granted this Board by stipulation be-[fol. 64] tween the interested parties, and voluminous testimony, numerous documentary exhibits, and elaborate briefs were received in evidence. After carefully considering the proof submitted to it, this Emergency Board made its Report to President Truman on June 15, 1950.

On July 11, 1950, the Brotherhood of Railroad Trainmen wired President Truman that it would not accept the Emergency Board's recommendations. Thereafter on August 4, 1950, the Brotherhood of Railroad Trainmen asked President Truman to take over the railroads, whereupon conferences were begun under the auspices of the White House, and with the good offices of Dr. John R.

Steelman acting mediator on behalf of President Truman. Settlement negotiations continued intermittently at The White House level under the direction of Dr. John R. Steelman on all matters in controversy between August 4, 1950, and December 21, 1950. On this last named date with the assistance of Dr. John R. Steelman, the parties signed a Memorandum of Agreement at The White House in Washington, D. C., a copy of which is hereto attached, marked Exhibit "A", and incorporated in this Award by reference.

Following the signing of this Memorandum of December 21, 1950, the Carriers and the Brotherhood of Railroad Trainmen conferred and prepared a new Collective Bargaining Agreement embodying a final settlement of all controversies relating to wages, hours of labor, and Rule changes. The wage settlement alone resulted in Yard Service Employees represented by members of the Brotherhood of Railroad Trainmen receiving an increase of approximately $2.84 in their Basic Daily Rates of Pay. In this [fol. 65] connection it should be emphasized, that this new Collective Bargaining Agreement contains job classifications with minimum basic daily rates of pay thereto attached, but this instrument does not contain an exhaustive, or all inclusive schedule of occupational descriptions, of the tasks and duties performed by the several classifications of labor represented by the Brotherhood of Railroad Trainmen.[1] The new Collective Bargaining Agreement also contains a reference at pages 17 and 18, to the particular matters presently before the undersigned Referee.[2]

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[1] See: Collective Bargaining Agreement dated May 25, 1951, identified as Carriers' Exhibit 3.

[2] On pages 17 and 18 of Carriers' Exhibit 3 the following excerpts pertinent to the present Reference Proceeding appear:

"Article 8—Coupling and Uncoupling Air, Signal and Steam Hose "(Subject to separate agreement made May 25, 1951.)"

"Article 9—More Than One Class of Road Service.

"(Subject to separate agreement made May 25, 1951.)"

Pursuant to and contemporaneous with the execution of their new Collective Bargaining Agreement identified as Carriers' Exhibit 3, the parties to this Reference Proceeding signed an Ancillary Agreement, a copy of which is likewise hereto attached, marked Exhibit "B", and incorporated in this Award by reference. In substance, words, and effect it declares:

> "The parties are in dispute with respect to the following:
>
> "(1) Coupling and Uncoupling Air, Signal and Steam Hose.
>
> [fol. 66] "The parties are agreed that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for Decision.
>
> "(2) More Than One Class or Road Service.
>
> "The parties are agreed that the dispute as to the wording of this rule shall be submitted to a referee to be appointed by the President of the United States for Decision."

Following the signing of the principal and ancillary labor agreements just referred to, President Harry S. Truman appointed the undersigned as Referee of both controversies described in Exhibit "B". This appointment is memorialized in a letter transmitted to said Referee, reading as follows:

"The White House

Washington June 8, 1951.

"Dear Mr. Cheney:

"In accordance with the Agreement of May 25, 1951, between the Eastern, Western and Southeastern Carriers' Conference Committees and the employees represented by the Brotherhood of Railroad Trainmen, you are hereby appointed as referee to determine the two issues specified in that Agreement. A copy of the Agreement is attached for your information. I appreciate your willingness to assume this responsibility.

Very sincerely yours, (S.) Harry S. Truman.

Mr. George Cheney, Collective Bargaining Service, 641 Spreckels Building, San Diego 1, California."

[fol. 67] In compliance with the ancillary agreement between the Carriers and the Brotherhood of Railroad Trainmen; and following prior notice to said parties, and an agreement between them that the undersigned was acceptable as the Referee, informal hearings on the two issues offered in this instrument were begun at the Statler Hotel in Washington, D. C., on June 25, 1951. These hearings were continued from day to day and hour to hour thereafter, until all interested parties had been fully heard, both orally and on briefs.

Attention should also be invited to certain observations made by the Referee, at the close of the oral hearings. No attempt was made to hastily embrace the two unresolved controversies, or to determine them through or by means of an Arbitration Award. On the contrary, the Referee suggested that the Brotherhood of Railroad Trainmen and the Carriers convene such bargaining representatives as might be required for further collective bargaining among all interested and affected parties, and that a further effort be made to finally resolve the two matters still in dispute, by means of collective bargaining rather than by means of an Arbitration Award. The Referee declared during such proposed collective bargaining negotiations, that he would positively withhold making any Decision or Award on either issue. After having this suggestion under advisement for a period of approximately twenty-four (24) hours, a representative of the Brotherhood of Railroad Trainmen informed the Referee that neither party believed the matters remaining in dispute could be resolved by further collective bargaining among them, and that both parties were requesting the Referee to proceed with an analysis of the evidence, and the preparation and re-

[fol. 68] lease of the Decision and Award. It should be added parenthetically, that the analysis of the evidence and the preparation and release of the present Award, covered substantially an additional period of thirty (30) days following the conclusion of the oral hearings. During this thirty day period, insofar as this Referee has been in-

formed, none of the affected Carriers and the Brotherhood of Railroad Trainmen have attempted to resolve any of all of the matters remaining in dispute on any property, by further collective bargaining.

Before embracing the present controversy, the Referee further emphasized to both parties that each can only achieve victory on a controversial subject, when they resolve their disagreements by means of collective bargaining. Inherent in the resolution of any controversy by arbitration, is the distasteful circumstance that the position of one adversary must prevail over the position taken by his opponent. Under the latter procedure, it is hardly to be anticipated that even the decision of a non partisan individual such as the present Referee, will be palatable or convincing to the loser. Bearing this in mind, both controversies will be approached from a strictly non partisan perspective, and the Award as to each will be founded on principles of practicability and ordinary common sense, and upon the equities of the contestants as established by a preponderance of the evidence, with an absence of concern as to whether the awards are palatable or unpalatable. Accordingly, the Referee believes that the following decisions on the two questions submitted for his decision, constitute a fair, reasonable, practicable, and equitable settlement of each dispute.

[fol. 69] Frame of Reference for the Coupling Function Dispute.

The first issue appearing in Exhibit "B" relates to coupling and uncoupling of air, signal and steam hose, commonly referred to in the jargon of railroad men as, "tying up or untying the air". For purposes of brevity, this subject will be hereinafter referred to as the "Coupling Function."

It cannot be overemphasized that the statement of this issue places no limitations or restrictions upon the Referee. He is both empowered and obliged by the very language of the issue to exercise an unbridled discretion in drafting a new Rule relative to the Coupling Function. The frame of reference under which this issue is submitted, does not require the Referee to interpret, or to be bound by any pre-

vious contracts, contractual provisions, or understanding agreed to by any Carrier and any Labor Organization. Neither does the frame of reference require the Referee to accept as conclusive of his determination, any previous finding, decision, or ruling by any administrative agency or arbitrator, whether governmental or private. In view of the obvious latitude extended the Referee relative to the coupling dispute, he manifestly must re-examine all facets of this problem, starting from its inception about the year 1887. We should not assume that any previous practice, rule, or manner of treating this problem is either correct, or incorrect, or desirable, or undesirable, in the light of modern conditions and industrial relationships. The statement of the issue, contemplates a review and examination de nova, of the vexatious and baffling coupling problem which for about two-thirds of a century, has confronted both the [fol. 70] Brotherhoods and the Carriers. Therefore, the studied purpose and intention of this Referee will be, the exercise of a wise discretion in drafting a new rule relative to the Coupling Function, which will be based upon practical considerations, common sense, and the equities of the situation as established by a preponderance of the evidence.

Nature of the Coupling Function.

Furthermore, the Coupling Function has always been an altogether simple process, requiring at most only a few minutes times for its performance even under difficult circumstances. Only an inconsiderable amount of skill and physical labor is involved in its performance. It is however attended by some greater or less risk of bodily injury or death, because the function must be performed in many instances by getting in between two stationary cars of a train to which a locomotive is physically attached.[3] When the Coupling Function is performed by passenger trainmen it also sometimes occasions soiling their uniforms, which they are required to keep clean.[4]

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[3] See: Brotherhood Exhibits "F" and "F-1", demonstrating that annually, about one trainman is killed while performing the Coupling Function on all American Railroads, during the working of 172 million man hours by about 202,000 trainmen.

[4] See: Carriers' Exhibit 5, page 8.

Basic Day Pay Provisions In the Labor Agreement.

The master labor contract between the Brotherhood of Railroad Trainmen and the Carriers, does now, and always has contained a Basic Daily Pay Rate for enumerated [fol. 71] classifications of labor, but this contract does not now, and never has embraced a schedule of job descriptions, enumerating and particularly specifying all of the various tasks performed by each class of Brotherhood or Railroad Trainmen Labor, for which Daily Rates of Pay are fixed on a basic eight (8) hour tour of service. Consequently, this labor contract does not expressly state whether the Coupling Function constitutes, or does not constitute, a part of the occupational tasks embraced within Brotherhood of Railroad Trainmen work. Custom and practice over the years, is the only industrial relations metric for determining what is, or is not, an occupational task properly embraced within Brotherhood of Railroad Trainmen work.

To illustrate, one of the Chicago area agreements contained occupational descriptions of some of the tasks customarily performed by and recognized as Brotherhood of Railroad Trainmen work. These occupational descriptions read as follows:

> "(a) The following shall be considered yard work, shall be handled by yardmen and shall be compensated for at not less than yard rates.
>
> "(b) The switching of all freight and passenger equipment operating exclusively within the switching limits;
>
> "(c) The transfer of all freight and passenger equipment operating exclusively within the switching lim-ts;
>
> [fol. 72] "(d) The handling of all construction and maintenance of way trains operating exclusively within the switching limits;
>
> "(e) The handling of all work trains and milk trains operating exclusively within the switching limits;
>
> "(f) The handling of all pay car service operating exclusively within the switching limits (by a regularly assigned yard crew);

But, as was pointed out by the Carriers, the above mentioned occupational description of a portion of the tasks customarily performed by yardmen is not an enumeration and description of all Brotherhood of Railroad Trainmen tasks. On the contrary, this contract omits occupational descriptions of such admittedly yardmen duties as the following: Throwing switches, setting br*eak*s, blocking cars, bleeding cars, turning angle cocks, etc. The foregoing observations demonstrate that argument by elimination cannot and does not accomplish the exclusion of the Coupling Function from the ordinary and customary tasks performed by members of the Brotherhood of Railroad Trainmen, which are compensated by Eight (8) Hour Basic Daily Rates of Pay provided for in the master labor contract.

History and Early Developments Affecting the Coupling Function.

Prior to 1887, air brakes connecting the various cars of a train had not been installed generally. Chain brakes consisting of a system of rods and chains, continuously con- [fol. 73] nected throughout the train, had been experimented with somewhat unsuccessfully. In 1869 the Westinghouse Company designed a straight air brake, but it had a serious fault namely that if a breach occurred in the airline, all braking power was lost. Following careful tests in 1885 and 1886 the automatic Westinghouse air brake was approved, and railroads generally began to rapidly equip their cars and trains with such brakes.[5] In 1893 the Uniform Safety Appliance Act was passed by Congress, which confirmed the trend. Such monumental technological improvements manifestly created new and different tasks and functions for performance by railroad workers. In turn they immediately posed jurisdictional and other industrial relations problems for the Carriers and their labor organizations.

From the very outset, the Coupling Function was performed both by carmen and members of the Brotherhood of Railroad Trainmen. Apparently, practical operating considerations alone initially governed the determination of

[5] See: Carriers' Exhibit 5, page 7.

supervisory employees, in assigning this particular work to individual crafts.[6] In other words, following the general installation of air brakes on American Railroad rolling equipment, practical operating considerations largely determined whether members of the Brotherhood of Railroad Trainmen, or the Brotherhood of Railway Carmen would be used to perform the Coupling Function. During these early years the decision relative to the performance of this function was left largely to the discretion of the yardmaster, trainmaster, and superintendents, etc., who were responsible for getting such work done under the particular [fol. 74] circumstances obtaining at any given time and place.[7] Sensible railroading early precluded the stopping of a busy yard engine while long strings of cars were to be coupled, in order to permit its ground crew to spend extensive periods of time making air hose couplings. Likewise, good railroading precluded stopping a carman who at the moment might be busy inspecting cars, packing journal boxes, closing doors, tightening leaks, or repairing brake rigging, etc., to transport him to some distant track for the purpose of tying up the air on one or two cars. The travel distance involved might be several miles or more; and, it might have to be accomplished by locomotive or perhaps even on foot. Indeed, a preponderance of the evidence persuades the Referee, that during the first few years following the general installation of automatic air brakes on American Railroads, the Coupling Function was not exclusively confined to, or performed exclusively by either members of the Brotherhood of Railroad Trainmen, or the Brotherhood of Railway Carmen.

Evolution of Proscriptive Rules Affecting the Coupling Function and Provisions for Arbitraries.

Shortly after air brake systems were generally adopted, the Brotherhood of Railroad Trainmen began seeking and secured certain restrictive provisions or rules in their labor agreements affecting the Coupling Function. Initially, these early proscriptions took the form of requirements that

[6] See: Carriers' Exhibit 4, page 7.
[7] See Carrier's Exhibit 5, page 8.

carmen either assist with, or be used to perform the Coupling Function under certain limited and specified circum-[fol. 75] stances.[8] The concept of "limited and specified circumstances" is most significant, because under many contracts with American Railroads, members of the Brotherhood of Railroad Trainmen are and for years past have been willing to perform the Coupling Function, among others, in return for their eight hour basic daily rate of pay, and without additional compensation, and regardless of the presence or absence of carmen, in the following situations:

1. Between engine and first car;
2. Between caboose and rear car;
3. Between cars where cuts are made for crossings;
4. Between cars doubled from one track to another;
5. Between engine and caboose;
6. Between cars where cuts are made to set out cars.[9]

Progressively however, with the passage of time, the Brotherhood of Railroad Trainmen displayed an increasing reluctance to perform the Coupling Function, unless its members are granted additional pay in the form of "arbitraries", upon the hypothesis that such tasks are out-of-craft duties, rightfully belonging to carmen, a contention which will be discussed later on in greater detail.[10]
[fol. 76] But, for many decades after the initial restrictive rules were negotiated and inserted in sundry contracts with individual Carriers, the Brotherhood of Railroad Trainmen rarely pressed claims for violations which included requests for monentary payments to its members. In recent years however, such claims for violations of Coupling Function rules have frequently taken the form of requests for additional compensation. The reason for this development is obvious. In the years immediately following the negotiations of the restrictive coupling rules, many claims were made for their violation. When such violations were estab-

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[8] See: Carriers' Exhibit 4, pages 6 and 7.

[9] See: Carriers' Exhibit 4, page 6.

[10] The carmen belong to the Brotherhood of Railway Carmen of America, which is a distinct and separate labor organization from the Brotherhood of Railroad Trainmen.

lished before a private or governmental administrative tribunal, the Carrers would only be directed to observe the rule, but no monetary penalties would be assessed for its violation, unless the particular rule violated specifically provided for arbitraries. In order to reduce the number of violations, the Brotherhood of Railroad Trainmen finally adopted a policy of always requesting monetary penalties, for the violation of a restrictive rule affecting the Coupling Function.

The pioneer award involving monetary penalties for violations of a coupling rule appearing in a labor contract with the Brotherhood of Railroad Trainmen, is Award No. 8258, rendered by the First Division of the National Railroad Adjustment Board. On July 19, 1943, this Board sustained the claim of two yardmen employed by the Pittsburgh Lake Erie Railroad Company for an additional day's pay for having been required to perform the Coupling Function in violation of a rule on this subject. Following the release of this Award in Case No. 8258, many of the Carriers began negotiating amendments to their Coupling Function rule, providing for definite minimum and maximum arbitraries, in the nature of liquidated damages for violations of such [fol. 77] rules. Such new coupling function rules embracing definite and certain arbitraries, were thus gradually developed by particular Carriers to meet special problems on their individual properties.

These modern coupling function rules sometimes provide complete exemptions from the payment of arbitrary compensation between the engine and the first car, or between cars where cuts are made for crossings, or between cars doubled from one track to another, or between the last car and the caboose, etc., as heretofore described. Other modern amended rules provide for "closed territories" as hereinafter defined with arbitraries that are relatively high, frequently amounting to eight hours' pay, in addition to the basic straight time wage rates for members of the Brotherhood of Railroad Trainmen. Still others create "open territories" where only moderate penalties of perhaps an hour's pay are fixed as the arbitrary. Last but not least, some of the modern amended rules provide for uniform specific dollars and cents arbitraries whenever the Coupling

Function is performed, and regardless of whether it was done in "open or closed territories". It is in such a setting, that the propriety of drafting a new rule and the present proposal of the Carriers for such a new rule, must be determined.

Summarizing the evolution of these proscriptive rules and the arbitraries thereto attached, it will suffice to state that as of today, rules have been negotiated by the Brotherhood of Railroad Trainmen with most large railroads, restricting the use of trainmen or yardmen in the performance of the Coupling Function. These rules vary widely in terminology. In general, they apply restrictions only when car inspectors or carmen are present in the yard or ter- [fol. 78] minals where the work is to be performed. In a number of cases exceptions are made permitting the use of trainmen and yardmen to make certain designated hose couplings, even when car inspectors or carmen are available; and, nearly all permit the performance of the Coupling Function by trainmen and yardmen if arbitraries are paid. Likewise, at many points on most railroads where no car inspectors or carmen are employed, the use of trainmen and yardmen to perform the Coupling Function is, and for many years has been, an established fact, usually without the payment of any arbitrary. Likewise, at many other points where carmen are employed during only a portion of the calendar day, when they are not on duty, trainmen and yardmen perform the Coupling Function, usually without additional compensation.

The evolutionary circumstances just detailed, are persuasive that from the inauguration of the air brake systems to modern times, trainmen, yardmen, and carmen have all performed the Coupling Function. From the perspective of interpretations placed upon the restrictive rules themselves by the parties, such rules do not establish hard and fast exclusive craft boundaries as between the Brotherhood of Railroad Trainmen, and the Brotherhood of Railway Carmen, allocating the performance of the Coupling Function solely to carmen. On the contrary, present rules portray examples of the overlapping of craft lines, and illustrations of tasks which are common to the crafts of both the Brotherhood of Railway Carmen, and the Brotherhood of Railroad

Trainmen. It should also be observed that this conclusion is not original with the present Referee. The Federal District Court, in the case of Shipley vs. Pittsburgh and L. E. [fol. 79] R. Company, 83 F. Supp. 722, previously reached an identical conclusion, from which significantly no appeal was taken.[11]

Proposed Coupling Function Rule Offered by the Carriers.

In the interest of equity and uniformity, the Carriers have offered several proposed statements of a rule governing [fol. 80] the Coupling Function. Their most recent proposal on this subject is substantially as follows:

"Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work, and no payment therefor will be made, but where rules, agreements, interpretations or practices require payments to yardmen under conditions stated

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[11] The District Court of the United States made the following Findings of Fact, and Conclusions of Law in the Shipley case:

"11. The plaintiff trainmen who were required to couple air hose during the period covered by this action, where car inspectors were employed or available, in so coupling air hose were performing their regularly assigned duties; and on such occasions and in so doing were not working outside of their craft.

"12. The coupling of air hose was common to and part of the regular assigned duties of trainmen and carmen.

"13. The coupling of air hose is not common to any particular craft, and on the contrary was recognized in the craft of both trainmen and carmen.

"74. Car inspectors and trainmen had coupled air hose for a long period of time prior to and during the period involved in this action.

"75. Carmen or their representative bargaining agency have never complained that the coupling of air hose by trainmen was an infringement on their craft or the performance of their duties."

therein for coupling or uncoupling air, steam and signal hose, such rules, agreements, interpretations, or practices shall be changed to provide for the payments of only .. cents.

"Individual Carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their general chairmen prior to ....., 1951, and if accepted, the date of such notification shall become the effective date."

They assert the effect of this rule would be, to eliminate present restrictive interpretations and/or practices limiting the use of yardmen to couple or uncouple air, steam and signal hose. It would avoid the confusion and possible further misunderstandings, which conceivably might arise out of an attempt to redefine the meaning and intent of the rule recommended by Emergency Board #81, as of June 15, 1950. Furthermore, it would preserve extra pay in the form of arbitraries for Brotherhood of Railroad Trainmen employees coupling or uncoupling air, steam or signal hose, under existing rules, agreements, interpretations or prac- [fol. 81] tices, but it would create a uniform ceiling for such extra pay, in such an amount as the present Referee, in equity and good conscience decides is just and reasonable.

The Carriers emphasize, that the rule they are presently urging upon this Referee, will cost them hundreds of thousands of dollars per annum. They point out that in equity and good conscience they should not be subject to the payment of any arbitraries whatever for the performance of the Coupling Function, because the tasks of coupling and uncoupling air, steam and signal hose are in fact a part of those embraced within Brotherhood of Railroad Trainmen work, and realistically constitutes an integral part of their regular tour of duty, for which the members of this Brotherhood receive Eight (8) Hours of Basic Daily Pay.

The Carriers further emphasize that the second paragraph of their proposal embodies what is commonly known as a "Savings Clause". In the past, such language has been made a part of agreements involving new or amended rules sought by either party. It would simply enable an individual carrier, to keep its existing rule pertaining to the

Coupling Function, in preference to the rule fixed and determined by this Referee, if such Carrier so desires.

In connection with their present proposal, the Carriers expressly declare and stipulate that they have no intention of transferring the Coupling Function entirely from carmen to trainmen. The Carriers unequivocally state that they do not intend under their proposal as hereinbefore quoted, to require trainmen and yardmen to perform the Coupling Function (quantatively speaking) in its entirety; [fol. 82] neither do they intend to discontinue all performance of this work by carmen. Their offer suggests that operational considerations shall govern, whether carmen, trainmen, or yardmen perform the Coupling Function.[12]

The Carriers also urge the ceiling on arbitraries provided for the performance of the Coupling Function, be fixed at sixty (60c) cents. The reasoning by which the Carriers arrive at the sixty (60c) cent figure is as follows: They claim it would be entirely impractical for only one member of a switching crew to perform the Coupling Function. Consequently, the Carriers take the position that it would be unwise to draft a Coupling Rule, providing for the payment of an arbitrary to only one member of the switching crew, as recommended by Emergency Board #81. They point out that many of the so called "Escape Agreements" which have been recently executed, provide for the payment to each member of the crew of one hour's pay in "open [fol. 83] territory", which demonstrates an intention of the Brotherhood and the Carriers to fix the ceiling for such

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[12] See: Stipulation in Rebuttal Statement by Frank J. Goebel submitted on behalf of the Carriers in the present proceeding, reading as follows at page 5:

"We need not discuss at length the discussion by the employees with respect to transfer of the work of coupling and uncoupling air hose from carmen to trainmen. As stated in my testimony before Emergency Board 81, the Carriers do not intend under this proposal to require trainmen and yardmen to perform all of this work, or to discontinue all performance of this work by carmen. Particular operational considerations will govern over it."

arbitraries, at the equivalent of one hour's pay. The current hourly rate for foremen is $1.925 and for helpers is $1.756. The average of these two rates would be approximately $1.85 per hour, and the Carriers suggest dividing the average of the two rates, and paying all three men in the crew, approximately sixty (60c) each for performing the Coupling Function.

Referee's Analysis of The Carriers' Proposal.

It will be instructive to analyze the Carriers' proposal, and ascertain what changes it will accomplish, if adopted. One of the principal purposes of this proposal appears to be, to put an end to the controversy which has existed for years over the propriety of the performance of the Coupling Function, by members of the Brotherhood of Railroad Trainmen. Such an intention is evident from the first clause of the proposal, reading as follows:

"Rules, agreements, interpretations, or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work—* * *."

It further appears to this Referee, that the next clause conditionally preserves rather than destroys existing rules, agreements, interpretations and practices currently providing payments (arbitraries), for the performance of the Coupling Function by hardmen but with the qualification that a reasonable uniform ceiling payment be fixed there-
[fol. 84] for by the Referee, which ceiling shall also constitute a minimum floor payment for such work.

The Carriers' proposal also probably is intended to prevent further future extension of the penalty payments for the performance of this function, through interpretation or construction of existing or future rules on this subject, unless arbitraries are created therein by clear, express, and unambiguous language.

As already observed, the last paragraph of the Carriers' proposal unquestionably will enable any individual Carrier if it so desires, to retain its present rule on this subject, in

preference to any rule that may be drafted and made effective by the Referee through this Award.

Brotherhood Position on the Coupling Function Rule.

The position of the Brotherhood of Railroad Trainmen, both historically and presently on the subject of Coupling Function Rules is, in general, to resist any change in the status quo. To state the same thing differently, the Brotherhood in substance and effect says, "leave the solution of this problem to collective bargaining among the interested parties." The organization urges that no one, particularly the present Referee, should alter the form, content, or amount of arbitraries to be paid under the various rules now in existence.

In support of this position, the Brotherhood strenuously argues that the Coupling Function is out-of-craft work for its members, and belongs to the carmen's craft, and that [fol. 85] this Referee should not alter this situation. The Brotherhood states on pages 1 and 2 of its Reply Brief:

"Every Coupling Rule in existence makes it crystal clear that trainmen and yardmen could not be required to perform this function only in the severely limited circumstance where carmen or others were not 'available' or 'employed' or the like * * *. The Coupling Function was never—to this day is not—a part of the yardmen and trainmen's obligation, as we have abundantly demonstrated in our principal statement."

The existence of any formal agreement between the Brotherhood of Railroad Trainmen and the Brotherhood of Railway Carmen of America, awarding the Coupling Function exclusively to carmen, insofar as this proceeding is concerned, is conspicuous by its absence. In addition, the Record in the present proceeding is replete with evidence demonstrating:

1. During many past decades the Brotherhood of Railroad Trainmen has contracted and agreed with sundry Carriers, to arrogate the performance of the alleged carmen Coupling Function to trainmen and yardmen, without addi-

tional pay, under certain circumstances heretofore described.[13]

2. For many past decades the Brotherhood of Railroad Trainmen has signed agreements with sundry Carriers [fol. 86] specifically describing "open territories" (where there are no carmen) and "closed territories" (where carmen are present); and contracting and agreeing for extra pieces of silver, to arrogate the performance of this alleged carmen Coupling Function to trainmen and yardmen.

Such evidence effectively disposes of the ingenious but unpersuasive argument of the Brotherhood of Railroad Trainmen, that the Coupling Function is out-of-craft work for its members, and should be performed exclusively by carmen. If this function belongs exclusively to the carmen's craft, how can the Brotherhood of Railroad Trainmen justify its performance by trainmen and yardmen under any circumstances, and particularly by the payment of arbitraries? Visualize if you will, the consternation that would appear on William Hutcheson's face, if the International Association of Machinists took the position that the setting of machinery belonged exclusively to the carpenters' craft, but that the Machinists' Union could arrogate the performance of this function to Machinists, provided the employers paid its members an "arbitrary". Such an argument is unpersuasive that the Coupling Function belongs exclusively to another craft, or that this Referee should not establish a new rule because of any such past fiction. On the contrary, such an illogical position convincingly demonstrates that the controversial function in question, is a typical example of overlapping craft lines, and an illustration of tasks which are common to both the carmen and trainmen crafts, and consequently should have little bearing on the determinations presently to be made. [fol. 87] The Brotherhood resists a new rule on still another ground. It argues that the creation of a new rule on this subject, will permit the Carriers to transfer the perform-

[13] For enumeration of the circumstances under which the members of the Brotherhood of Railroad Trainmen are willing to, and do perform the Coupling Function, see page 16 of this Award.

ance of the Coupling Function from the Brotherhood of Railway Carmen, to the members of the Brotherhood of Railroad Trainmen, in its entirety. In view of the wording of the Carriers' last proposal this argument by the Brotherhood appears entirely beside the point. Such an argument also obviously must be weighed in the light of the positive, unequivocal representations made by the Carriers, designed to impel this Referee to adopt their proposal. The statement made on behalf of the Carriers by Mr. Frank J. Goebel and quoted on page 19 of this Award, in the nature of a guarantee and warranty to induce this Referee to place the Carriers proposed new Coupling Rule in effect, must be accorded the weight due such evidence. This Referee does not believe the aforesaid representations and warranties, are being made by the Carriers with tongue in cheek. On the contrary, this Referee believes these representations are made in good faith, and expressly states that but for such representations, he would hesitate to accept and adopt the wording of the new Coupling Rule as proposed by the Carriers.

The Brotherhood also urges this Referee to decline the new rule proposed by the Carriers, because under it, the Carriers allegedly will return to the previous status when Coupling Rules could be violated, but no arbitraries could be enforced for such violations. This construction of the Carriers' proposal by the Brotherhood, does manifest violence in the customary and usual connotations accorded simple English terms, and is indeed a "violent interpretation" of the wording proposed.

[fol. 88] On page 20 of this Award the present Referee analyzed the intention manifested by the language appearing in the Carriers' proposal. He emphasized, that the palpable purpose of the second clause of the first paragraph of this proposal, was the preservation of existing rules and practices, plus the preservation of a uniform sum certain in money (an arbitrary) for the performance of the Coupling Function under such rules and practices. The obvious meaning of such language would effectively prevent the Carriers from returning to that state of affairs, which previously enabled Coupling Rules to be violated without the payment of arbitraries. The aforementioned argument of

the Brotherhoods is entirely beside the point, because the Carriers' proposal expressly, and in clear and unambiguous terms states, that arbitraries in a uniform sum to be fixed by this Referee, shall be paid for the performance of the Coupling Function where, "rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein * * *" Clearly therefore, the argument of the Brotherhood that the proposed new rule would permit the Carriers to return to a situation where no arbitraries are payable for violations of the rule, is untenable.

As another reason for maintaining the status quo, the Brotherhood argues that previous Carrier proposals for Coupling Rule changes have been declined and denied by Emergency Boards, who have passed judgment on the same. In discussing the frame of reference for the present controversy, this Referee directed attention to the fact that the parties placed no limitations on his forthcoming determination. He was neither enjoined to be bound by previous [fol. 89] recommendations of Emergency Boards, nor was he directed to disregard them. In their wisdom, the parties to this proceeding have not by the wording of the present issue, compelled this Referee to assume that any part or present condition, circumstance, or determination, ipso facto is right, simply because it transpired, and consequently that it should be controlling of the determination presently to be made. The Referee was granted a carte blanc to determine the Coupling Rule controversy de nove. Hence unless prior pronouncements by Emergency Boards on this subject appear persuasive, this Referee is at liberty to reject them. Previous Emergency Boards have issued diverse and somewhat conflicting recommendations, and these appear unpersuasive to this Referee of the determination which should be here made, of the Coupling Function issue as stated in the present Submission.

The Brotherhood also strenuously argues, the Referee believes to an unwarranted conclusion, that collective bargaining is the only proper and desirable method for resolving the Coupling Function problem. It vigorously urges him to abstain from any action, and to simply return the Coupling Function controversy to the parties, to be resolved

or left in its present unresolved state, depending upon the productivity which would result from further collective bargaining.

Reference to the action which the present Referee took immediately prior to embracing the present controversy, appears to be sufficient comment regarding the propriety of such a determination. Resolution of this dispute by collective bargaining rather than by arbitration, is precisely what the Referee suggested, but, within twenty-four hours [fol. 90] after this suggestion was made, the Referee was informed by a representative of the Brotherhood of Railroad Trainmen, that neither party believed the Coupling Function issue, or for that matter the other issue also in dispute, could be resolved by further collective bargaining among the interested parties. Attention also has been directed to the circumstance, that during the succeeding thirty days following this development, the parties apparently have made no progress whatever through collective bargaining, in the resolution of the Coupling Function controversy. Upon such a state of the Record, the Referee must conclude, that it would be expecting the improbable if not the impossible, to assume that further collective bargaining in the foreseeable future, would be productive of a final, complete, and nation-wide determination of the Coupling Function dispute. Accordingly, the Referee is persuaded he should reject such a highly speculative method for solving the Coupling Function problem.

The Brotherhood makes a number of other contentions, all of which have been considered, but in none of them does the Referee find substantial merit. To undertake to consider and discuss all of these contentions, would extend this Decision and Award now overlong, to unreasonable lengths. With reference thereto the Referee will do nothing more here, than to say as already stated, that in none of the remaining contentions of the Brotherhood does he find substantial merit, such as would call for discussion.

Level of Pay for Performance Of the Coupling Function.

It does not logically follow however from the conclusions just stated, that yardmen should perform the Coupling [fol. 91] Function solely in consideration of their Basic

Daily Rate of Pay. This Referee is persuaded, the payment of a reasonable arbitrary for the performance of such work can well be sustained on another ground.

It has been established in the satisfaction of the Referee by a preponderance of the proof offered in this proceeding, that the performance of the Coupling Function by the members of the Brotherhood of Railroad Trainmen, subjects them to risks of bodily injury and/or death above and beyond risks of this character experienced by carmen, when the latter perform the identical function. It is undenied that when carmen perform the Coupling Function, they are protected by a blue flag, and at night by a blue light. This prohibits any cars thus protected from being moved while the Coupling Function is being performed by carmen. Indeed, it prevents any propulsion unit such as a locomotive, from being even physically attached to cars which are so protected by a blue flag or a blue light, and this is no inconsiderable protection. Manifestly therefore, when carmen perform the Coupling Function, they are not subject to the risk of bodily injury or death occasioned by inadvertent movement of a locomotive, or spontaneous slack action in a long train of cars. Although the evidence demonstrates this additional risk of bodily injury or death is not great in degree, it is nevertheless a very real additional risk thrust upon members of the Brotherhood of Railroad Trainmen, to which carmen are not subjected, and which at times does result in bodily injury and/or death to members of the Trainmen's Union.[14] [fol. 92] Since a preponderance of the evidence offered in this proceeding demonstrates, that the Coupling Function is not out-of-craft work for yardmen, but on the contrary is a typical example of overlapping craft lines and represents tasks common to both carmen and yardmen crafts, such an unestablished claim cannot properly become a factor for fixing the level of any arbitrary, to be paid yardmen for the performance of such a function. If this be true, the question then arises: What yardstick or industrial metric should the Referee use, in determining the level and extent of the arbitrary to be paid?

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[14] See: Brotherhood Exhibits, "D" and "F" and "F-1".

The conclusions heretofore outlined relative to the Coupling Function dispute, indicate all facets of the problem have been canvassed, save and except the amount or extent of the arbitrary which should be fixed for the performance of this Function by the yardmen. The factors properly bearing upon this phase of the controversy and which should determine and control the Referee's Award will now be examined.

Being subject to such an additional risk of bodily injury and/or death, in the judgment of this Referee, is sufficient grounds to sustain the payment of additional compensation to yardmen for performing the Coupling Function, in the form of a reasonable arbitrary. But, the amount of the arbitrary to be granted yardmen for performing the Coupling Function, cannot be ascertained by applying any exact mathematical formula.

The only yardstick established by the evidence in the present Record, is reasonable compensation for an additional risk of bodily injury or death thrust upon yardmen, [fol. 93] that is not assumed by carmen when they perform the identical function. Attention has been previously directed to the degree of this risk. It is uncontroverted that only about one member of the Brotherhood of Railroad Trainmen is killed annually while performing the Coupling Function on all American Railroads; and that this result arises only, when approximately 202,000 members of this organization perform substantially 172,000,000 man hours of work. In other words, the risk of death or bodily injury due to the movement of a locomotive or slack action of a train is remote, and very slight in degree. Yet this *is* the only ground established by the evidence, upon which the present Referee can sustain the payment of arbitraries to yardmen, for the performance of the Coupling Function.

Referee's Award on the Coupling Function Dispute.

After due consideration, and after being fully advised in the premises, and upon a preponderance of the proof received in this proceeding, the undersigned Referee makes the following Decision and Award, on the first issue ap-

pearing in the ancillary agreement dated May 25, 1951, which was signed by the parties to this proceeding:

A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing [fol. 94] such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements, interpretations, or practices shall be changed to provide for the payment of only 95 cents.

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date."

Decision and Award on the More Than One Class of Service Controversy.

(This decision and award is omitted.)

The Decision and award of the undersigned Referee upon the two (2) issues appearing in the ancillary agreement dated May 25, 1951, and which was signed by the parties to this proceeding, shall be final and binding upon said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committees of his Decision and Award, and each Carrier shall make its election within such period, in accordance with the savings clause provisions of the proposed rules.

(S.) Geo. Cheney, Referee.

Released at Washington, D. C. August 1, 1951.

[fol. 95] (Exhibits referred to are not attached.)

NOTE RE EXHIBIT

Exhibit "B"—Supplemental Agreement by the carriers and employees with respect to wages and rules, etc., dated 5/25/51, (Same as Exhibit "A"); Omitted from the Printed Record, being heretofore copied at page 33.

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EXHIBIT "C"

Post Office Box 1538, Columbus, Georgia,

August 2, 1943.

Mr. W. J. Collins,
Assistant to General Manager,
Terminal Building, Macon, Georgia.

Dear Sir:

I desire conference for the purpose of adjusting complaint of yardmen at Atlanta protesting being required to couple air on cuts of cars leaving industry yard, testing brakes, etc. This matter has been handled with Superintendent Roney under docket No. 3 July 5th, same being declined claiming this has been a practice in industry yard for a number of years.

We contend that a force of car men are employed at industry yard for the purpose of testing air brakes on cars, which have to be tested before leaving and for making such repairs to the air brake equipment as is necessary, such as changing triples, packing pistons, as well as minor repairs to the cars.

[fol. 96] This work is not in line with switchmans duties and we therefore protest switchmen being required to do this work.

Yours very truly, (S.) G. D. King, (G. D. King),
Chairman, General Grievance Committee.

EXHIBIT "D"

Brotherhood of Railroad Trainmen
719 Realty Building, Savannah, Georgia.

November 17, 1947.

Mr. W. J. Collins, Assistant to General Manager,
Central of Georgia Railway,
211 Terminal Building, Macon, Georgia.

Dear Sir:

I wish to list for conference, request of Switchmen, Macon Yard, that they be relieved of coupling and uncoupling air hose.

This request handled in conference with Superintendent Roney, on October 27, 1947, by Local Chairman, W. F. Sanders.

Yours very truly, (S.) A. M. Sullivan, General Chairman.

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[fol. 97] EXHIBIT "E"

202 Professional Bldg., Macon, Georgia,

September 16th, 1949.

Mr. W. J. Collins, Asst. to Vice-Pres. & Gen. Mgr.,
211 Terminal Building, Macon, Georgia.

Dear Sir:

This is to advise that we request conference for the purpose of negotiating a rule for roadmen coupling air hose and steam hose at outlying points where Car Inspectors are employed or not employed for yardmen coupling air hose and making air brake test on such as transfer cuts and house cuts on this property.

We do not have a rule covering this service and take the

position that these duties does not come within the scope of roadmen or yardmens duties.

Yours very truly, (S.) T. E. Temple, (T. E. Temple), General Chairman, BRT, O. L. Brooks, (O. L. Brooks), General Chairman, ORC.

TED/OLB:nj.

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[fol. 98] EXHIBIT "F"

Central of Georgia Railway Company

Macon, Georgia, Aug. 16th, 1951.

Mr. B. G. Byington, General Chairman, B. of R. T.,
Room 202 Professional Building,
Macon, Ga.

Dear Sir:

Referring to Referees Decision and Award of August 1st, 1951 upon the following matters,

(1) Coupling and uncoupling Air, Signal and Steam Hose and

(2) More than one class of Road Service.

In accordance with this decision and award you are hereby advised that the Central of Georgia Railway Company desires to and will retain its present practices without modification with respect to Item (1) above.

As to Item (2) above the said Railway Company desires to and will accept the rule as contained in the award of the Referee effective September 1st, 1951 and which includes questions and answers as to proper application of said rule by the Referee.

[fol. 99] Please acknowledge receipt of this letter.

Very truly yours, (S.) W. J. Collins, Asst. to Vice Pres. & General Manager.

Copy to, Mr. A. J. Bier, Washington, D. C., Mr. R. R. Cummins, Savannah, Ga.

EXHIBIT "G"

Brotherhood of Railroad Trainmen

General Grievance Committee

Central of Georgia Railway

Room 202 Professional Building

Macon, Georgia

August 20, 1951.

Mr. W. J. Collins, Asst. to Vice President and
General Manager,

Central of Georgia Railway Company,
Terminal Building, Macon, Georgia.

Dear Sir:

Acknowledging your letter dated August 16 relative to Referee's Decision and Award of August 1, 1951 upon the following matters:

(1) Coupling and Uncoupling Air, Signal, and Steam [fol. 100] Hose and

(2) more than one class of Road Service.

You stated in agreement with this decision and award. You hereby notify and advise that the Central of Georgia Railway Company desires to and will retain its practice without modification with respect to Item (1) above and as to Item (2) above, the said Railway Company desires to and will accept the rule as contained in the Award of the Referee effective September 1, 1951 and which contains questions and answers as to proper application of said railroad by Referee.

Please be advised: I acknowledge receipt of your letter concerning the above mentioned matters but as yet, will be unable to enter into any eminent agreement concerning these decisions until I am further advised by my Grand Lodge.

I will advise you further when I will be agreeable to handle same.

Yours very truly, (S.) B. G. Byington, (B. G. Byington), General Chairman.

BGB/s.

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[fol. 101] EXHIBIT "H"

Brotherhood of Railroad Trainmen

General Grievance Committee

Central of Georgia Railway

Room 202 Professional Building

Macon, Georgia

September 1, 1951.

Mr. W. J. Collins, Assistant to Vice Pres. and General Mgr.,

Central of Georgia Railway,
211 Terminal Building, Macon, Georgia.

Dear Sir:

With further reference to yours of August 16 relative to:

1. Coupling and uncoupling air, signal, and steam hose and

2. More than one class of road service.

Please be advised that your understanding as to any further handling not being necessary is correct, and there will be no need for any further handling as I now understand that the Chaney Award is legal and we accept the decision of the Referee.

Yours very truly, (S.) B. G. Byington, (B. G. Byington), General Chairman.

BGB/s.

[fol. 102] EXHIBIT "I"

Macon—September 5, 1951—wjc/w.

File T 6224.

Mr. W. E. Dillard, Columbus, Georgia, Mr. W. H. Young, Savannah, Georgia, Mr. H. W. Waters, Macon, Georgia, Mr. J. D. Wallis, Atlanta, Georgia.

Gentlemen:

The Brotherhood of Railroad Trainmen has been handling various claims for additional pay for yardmen coupling or uncoupling air, signal, and steam hose.

This controversy has now been settled by arbitration which was in our favor and, in effect, it simply means that we will pursue our present policy or practice. Please see that this is done and make no changes.

Very truly yours, —— ——, Asst. to Vice-Pres. & Gen. Mgr.

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[fol. 103] EXHIBIT "J"

SUPREME COURT OF GEORGIA

Case Nos. 18748, 18749

CENTRAL OF GEORGIA RAILWAY COMPANY,

v.

BROTHERHOOD OF RAILROAD TRAINMEN ET AL.; AND VICE VERSA

Decided January 10, 1955

By the Court:

Hawkns, Justice. The Central of Georgia Railway Company, the plaintiff in error in the main bill of exceptions, assigns error upon the judgment of Chatham Superior Court sustaining certain general demurrers of the defendants and dismissing the plaintiff's petition on the merits. The defendants in the original petition, Local Lodge No. 721 of the Brotherhood of Railroad Trainmen, and certain

named persons in their individual capacity and as representatives of the labor organization and of the class of railroad trainmen employed by the plaintiff, are plaintiffs in error in the cross-bill of exceptions, assigning error upon the judgment of the trial Court overruling a general demurrer to the petition upon the ground that it shows on its face that the Court is without jurisdiction of the questions raised, and that the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively, under Title 45, § 153 (i), of U.S.C.A.

[fol. 104] The railway company's petition alleges certain proceedings and negotiations between the railroads and the unions under the provisions of the Railway Labor Act, which resulted in a collective bargaining agreement settling all issues in dispute except two, one of which is referred to as the hose coupling function, and is the one here involved. It is alleged that on the same date on which the collective bargaining agreement was executed, article 8 of which provided that "Coupling and uncoupling air, signal and steam hose, subject to separate agreement made May 25, 1951," the parties entered into another agreement which is denominated as a contemporaneous ancillary agreement and which provides: "This agreement is supplemental to an agreement (collective bargaining agreement) entered into this same date by the carriers and employees parties hereto with respect to wages and rules of road and yard service employees," and that the parties are agreed "that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for decision," and that "The decision of the referee shall be final and binding on the parties, and shall become effective" upon the giving of the notice and the making of the election therein provided for. The referee thus provided for and thereafter appointed made his findings that "A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: 'Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no pay-

ment therefor will be made but where rules, agreements, [fol. 105] interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements interpretations, or practices shall be changed to provide for the payment of only 95 cents. Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date.'" It is alleged that the railway gave due notice of its election to abide by the practice which had previously been in effect upon its system, and under which the employees who performed the hose coupling function received no additional or extra pay therefor. The collective bargaining agreement entered into between the parties provides for a moratorium as follows: "No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes . . . which may have been initiated prior to June 1, 1950." The petition alleges that notwithstanding the findings of the referee, the Brotherhood, on November 28, 1953, submitted to the railway company under the terms of the Railway Labor Act "and the current agreement" formal notice of demand for $1.50 a day for coupling hose; that the parties negotiated over this demand and were unable to agree; that the Mediation Board was called in and on May 21, 1954, the Mediator reported that his efforts had been unsuccessful and requested arbitration under Section 5 First of the Railway Labor Act; that arbitration was rejected by the Brotherhood, and that on May 25, 1954, [fol. 106] the railway company received a telegram from the Secretary of the National Mediation Board that the Brotherhood had authorized train and yardmen withdrawn from service Central of Georgia Railway at 5:00 p. m. Friday, May 28, 1954, unless matters in dispute satisfactorily adjusted prior to that time. Upon receipt of this information the railway company brought its petition for a declaratory judgment declaring the legal effect of and rights under

the arbitration award, a permanent injunction enforcing the award, and pending such an adjudication, a restraining order to maintain the status quo to prevent a threatened strike and alleged irreparable injury to the railway. The railway company contends that the award of the referee declining to allow additional pay to the members of the Brotherhood for coupling hose was a final award, binding on both parties, and that the Brotherhood cannot now seek to avoid consequences of that award. The Brotherhood contends that the award of the referee became a part of the original collective bargaining agreement and subject to the moratorium therein contained, and subject to change at the demand of the Brotherhood after the date of October 1, 1953, under the terms of the Railway Labor Act, Title 45, s156, U.S.C.A. Held:

1. The Railway Labor Act being a Federal statute, decisions of the United States Supreme Court construing and applying it are binding upon this Court. The Georgia Railroad v. Cubbedge, Hazelhurst & Co., 75 Ga. 321; Morris Plan Bank of Georgia v. Simmons, 201 Ga. 157, 164 (39 S. E. 2d 166).

2. In Slocum v. Delaware, Lackawanna & Western Railroad Co., 339 U. S. 239 (1) (70 Sup. Ct. 577, 94 L. ed. 795), it is held: "Under § 3 of the Railway Labor Act, the jurisdiction of the Adjustment Board to adjust [fol. 107] grievances and disputes of the type here involved is exclusive and the state Court erred in interpreting the agreements and entering a declaratory judgment. . . . The rationale of Order of Conductors v. Pitney, 326 U. S. 561, holding that Federal Courts should not interpret a carrier-union collective agreement prior to an interpretation of such agreement by the Adjustment Board, equally supports a denial of power to a state Court to invade the jurisdiction conferred on the Adjustment Board by the Railway Labor Act." In Order of Railway Conductors of America v. Southern Railway Co., 339 U. S. 255 (70 Sup. Ct. 585, 94 L. ed. 811), it is held: "A dispute arose between a railroad and a labor union as to the railroad's obligation under their collective-bargaining agreement to give conductors extra pay for certain services. The railroad refused the demand of the union and commenced a

declaratory judgment action in a state Court. The union thereafter filed a petition for hearing and award before the Adjustment Board under the Railway Labor Act. Held: The state Court was without power to interpret the terms of the agreement and adjudicate the dispute."

(a) Applying these rulings of the Supreme Court of the United States to the petition in the instant case, the trial judge erred in overruling the demurrer which raised the question of the Court's jurisdiction.

3. What is here held is not in conflict with the decision in Central of Georgia Railway Co. v. Culpepper, 209 Ga. 844 (76 S. E. 2d 482), for at page 847 this Court there recognized the rule that "A petitioner will be required to exhaust his administrative remedies before resort to the Courts will [fol. 108] be allowed when the determination of the suit will result primarily in a determination of future relations between the carrier and its employees." In the instant petition it is alleged that "Said declaratory judgment is required to direct the parties in their future negotiations."

Judgment reversed on the cross-bill of exceptions; main bill of exceptions dismissed. All the Justices concur except Wyatt, P. J., and Mobley, J., who dissent.

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*Complaint duly sworn to by —— ——. Jurat omitted in printing.*

[fol. 109] IN UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, SAVANNAH DIVISION

Civil Action File No. 797

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff,

v.

THE BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE No. 721, Brotherhood of Railroad Trainmen, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, and The Class of Employees of Central of Georgia Railway Company, represented by the foregoing named defendants, Defendants

SUMMONS IN A CIVIL ACTION

To the above named Defendant: J. W. Shirley, Bibb County, Georgia.

You are hereby summoned and required to serve upon Mr. John B. Miller, plaintiff's attorney, whose address is Georgia State Savings Bank Building, Savannah, Georgia, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against [fol. 110] you for the relief demanded in the complaint.

Scott A. Edwards, Clerk of Court, Eugene F. Edwards, Deputy Clerk.

(Seal of Court.)

Date: February 25, 1955.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Summons in Civil Action, Returnable not later than twenty days after service. John B. Miller, Georgia State Savings Bank Bldg., Savannah, Georgia, Attorney for Plaintiff.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named Brotherhood of Railroad Trainmen and L. E. Chester, by handing to and leaving a true and correct copy thereof with L. E. Chester personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

[fol. 111]

| | |
|---|---|
| Marshal's cost | $28.00 |
| Service | |
| Travel | |
| Total | $28.00 |

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named Local Lodge 721, Brotherhood of Railroad Trainmen and Z. P. Logan by handing to and leaving a true and correct copy thereof with Z. P. Logan personally at Savannah, Georgia in said District on the 25th day of January A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order

on the therein-named W. A. Nealey by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of January A.D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

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[fol. 112] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named B. G. Byington by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named W. B. English by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

[fol. 113] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named J. W. Shirley by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named J. G. Pardue by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D., 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

[fol. 114] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Filed February 25, 1955

Comes Now the Plaintiff in captioned cause, Central of Georgia Railway Company, and moves the Court for a temporary restraining order and a preliminary injunction in captioned cause, enjoining said Defendants from endeavoring to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951, and from endeavoring to negotiate or from demanding a rule with the Company prescribing extra

compensation to defendant class of employees for coupling and uncoupling air, steam or signal hose; and further, from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and uncoupling hose, in addition to their normal wage as compensation.

[fol. 115] The grounds in support of this motion are as follows:

1

The dispute concerning which the strike or work stoppage was called, has been referred to the National Railroad Adjustment Board pursuant to the Railway Labor Act, Title 45 U.S.C.A., Sections 151 et seq., and said Board is now in the process of determining the issue.

2

The services of the National Mediation Board have been invoked to no avail; the Mediator recommended arbitration which was agreeable to the Central of Georgia Railway Company but the Defendants declined to arbitrate.

3

The called strike or work stoppage is in violation of an arbitration agreement between the Plaintiff and Defendants and is likewise in violation of the Railway Labor Act.

4

Unless restrained immediately, said Defendants will strike and bring about the complete cessation of operation of Central of Georgia Railway Company. This will result in preventing the Central of Georgia Railway Company from fulfilling its obligation as an interstate rail-

road to render prompt and efficient service to the public under the Interstate Commerce Act.

[fol. 116] 5

Unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to the Central of Georgia Railway Company's property will be unavoidable, immediate and irreparable injury and loss and damage will result to the Central by reason of said strike, as more particularly described in the verified complaint filed herein. The Central has no adequate remedy at law.

6

If this motion be granted, the injuries, if any, to the Defendants herein, if a final judgment be in their favor, will be inconsiderable and will be adequately indemnified by bond, whereas the injury to the Plaintiff, if this relief be denied, will be ruinous, substantial, immediate and irreparable.

7

The Central of Georgia Railway Company has exhausted the possibility of settling this matter by negotiation and the matter is in the hands of the National Railroad Adjustment Board.

Wherefore, it is respectfully prayed that this motion be granted and a temporary restraining order and preliminary injunction issue.

(S.) John B. Miller, (John B. Miller), Attorney for Plaintiff, Central of Georgia Railway Company.

P. O. Box 642, Savannah, Georgia.

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[fol. 117] In United States District Court

Temporary Restraining Order and Order Assigning Hearing on Motion for Preliminary Injunction—February 24, 1955

This matter having come on to be heard upon Plaintiff's motion for a temporary restraining order and preliminary

injunction, based upon the verified complaint herein filed, and testimony before the Court under oath, and it appearing to the Court that the Defendants are threatening to invoke an unlawful strike against the Plaintiff, which strike will substantially affect the interest of the public adversely and which will cause immediate, substantial and irreparable injury, loss and damage to the property of Plaintiff, unless a temporary order issue, restraining such acts, be granted without notice of hearing:

And it appearing that notice of hearing prior to the entering of the temporary restraining order should not be required because a substantial and irreparable injury to Plaintiff's property will be unavoidable and immediate; and irreparable injury, loss and damage to Plaintiff's property in detriment of the public interest will result immediately upon the invocation of the strike;

It Is Therefore Ordered that until 8:40 P.M., on the 1st day of March 1955, unless good cause shown, why this order should be further extended, the Defendants and each of them, their agents, representatives, and all persons acting through or under them, or through their order, be and they are hereby temporarily restrained from endeavoring to negotiate a cancellation, modifica- [fol. 118] tion, change or revision of the award of Referee George Cheney, dated August 1, 1951, and from endeavoring to negotiate or from demanding a rule with the Company prescribing extra compensation to defendant class of employees for coupling and uncoupling air, steam or signal hose, and further, from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and uncoupling hose, in addition to their normal wage as compensation.

It Is Further Ordered that Plaintiff's motion for pre-

liminary injunction be set for hearing in this Court at 11:00 o'clock A.M., in the Post Office Building at Brunswick, Georgia, on the 28th day of February 1955. This temporary restraining order is on the condition that a bond with sufficient surety be filed by the Plaintiff herein, and approved by the Clerk or a Deputy Clerk of this Court, in the sum of Forty Thousand Dollars ($40,000.00) conditioned upon the payment to the Defendants or any of them for any loss, expense, or damage, including all reasonable costs and expense of defense, against the order or against the granting of any injunctive relief sought in this proceeding, and subsequently denied by the Court, should it later appear that this order, or any subsequent in-
[fol. 119] junctive relief are improvidently or erroneously granted.

Dated this 24th day of February 1955, at Brunswick, Georgia, at 8:40 P.M. o'clock.

(S.) F. M. Scarlett, District Judge, United States District Court, Southern District of Georgia.

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IN UNITED STATES DISTRICT COURT

BOND SUPPORTING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Approved February 25, 1955

GEORGIA,
Chatham County.

Whereas, the Central of Georgia Railway Company, in captioned cause has moved the Court to issue a temporary restraining order and preliminary injunction; and

Whereas, the Court has issued a temporary restraining order conditioned upon the execution, approval by the Clerk, and filing of a proper bond; and

Whereas, Central of Georgia Railway Company, does desire to herewith execute said bond in compliance with said order;

Now, Therefore, Central of Georgia Railway Company, Principal, and Globe Indemnity Company of New York as Security, do hereby acknowledge themselves jointly and [fol. 120] severally held and bound unto the Defendants in said cause, their heirs, successors and assigns, in the penal sum of Forty Thousand ($40,000.00) Dollars, for the payment of any loss, expense or damage, including all reasonable costs and expense of defense against the order or against the granting of an injunctive relief sought in this proceeding, and subsequently denied by the Court, should it later appear that this order, or any subsequent injunctive relief is improvidently erroneously granted.

In Witness Whereof, the Principal and Security have caused the execution and sealing of this instrument by their proper corporate officers, or attorneys-in-fact, this 24th day of February 1955.

Central of Georgia Railway Co., Principal, E. D. Bidez, Vice-President.

Attest:

B. D. Helmken, Secretary, Globe Indemnity Co. of New York, Security, By H. M. Carter, Attorney in Fact.

Approved by me this 25th day of February, 1955.

Eugene F. Edwards, Deputy Clerk, United States District Court, Southern Dist. of Georgia.

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[fol. 121] In United States District Court

Motion to Dismiss and Order Denying—Filed February 28th, 1955

Now comes the Brotherhood of Railroad Trainmen, et al defendants in the above entitled cause and moves the Court as follows:

1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

2. Dismiss the action because the petition shows on its face that the Court is without jurisdiction of the subject matter.

3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

4. The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris La-Guardia Act, Title 29, Sections 101-115 and seeks no other relief.

February 28, 1955.

Myrick & Myrick, Attorneys for Brotherhod of Railroad Trainmen.

[fol. 122] I certify that I have served John Miller with a copy of the foregoing motion.

Shelby Myrick, Jr., Of Counsel for Defendants.

ORDER

After hearing arguments of all counsel in this case the within motions are hereby overruled and denied.

This February 28th, 1955.

F. M. Scarlett, U. S. Judge.

[fol. 123] In United States District Court

**Transcript of the Proceedings**

Filed April 27, 1955, Lena W. Simkin, Deputy Clerk.

[Title omitted]

Brunswick, Georgia

February 28, 1955 March 4, 1955

In the United States District Court for the Southern District of Georgia, Savannah Division

Civil Action No. 797

Central of Georgia Railway Company

vs.

The Brotherhood of Railroad Trainmen, Local Lodge No. 721, Brotherhood of Railroad Trainmen, S. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, and the Class of Employees of Central of Georgia Railway Company Represented by the foregoing named Defendants

Appearances:

For the Plaintiff: Mr. John B. Miller, Attorney at Law, P. O. Box 642, Savannah, Georgia.

For the Defendant: Messrs. Myrick and Myrick, Attorneys at Law, Liberty National Bank Building, Savannah, Georgia, Mr. W. K. Sullivan, Attorney at Law, Cleveland, Ohio.

[fol. 124] Transcript of Proceedings on Hearing on Motion to Dismiss:

Statement made by Mr. Miller, Counsel for Plaintiff;
Statement made by Mr. Myrick, Counsel for Defendants;
Colloquy between Court and Counsel;
Statement made my Mr. Miller, Counsel for Plaintiff;
Colloquy between Court and Counsel;

Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

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At Chambers

Two-thirty o'clock, Monday Afternoon
February 28, 1955

STIPULATIONS RE PLAINTIFF'S PETITION

Mr. Myrick: Your Honor as counsel for the defendant we make the following stipulations and agreements about the petition of the plaintiffs. Now we admit paragraphs one, two, three, and four. Paragraph five being conclusions of law and allegations as to what jurisdiction the Court has, we deny that. Paragraph six and seven of the petition, we admit. Paragraph eight we admit with the exception of the last sentence which says that the second amendment is not the proper statement of this complaint, and you say that the second amendment is the proper statement of this complaint. Paragraph nine, ten and eleven we admit. You say with regards to paragraph twelve that the records quote the highest and best evidence and [fol. 125] they will speak for themselves. We agree to paragraph thirteen for the minute but we want to introduce the copy of the order——

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Beg pardon. Did you say you do admit it?

Mr. Myrick: Yes, sir. Paragraph fourteen we admit. We don't admit paragraph fifteen for this reason. We really—there are really two controversies here and we don't admit anywhere in this petition the controversy is what they say it is. We say it is an entirely different controversy. But to the—Controversy is as to whatever controversy that there is but to the word controversy we do not admit.

The Court: Well then what do you do to fifteen?

Mr. Myrick: Well sir, it is only a legal effect there anyway but I suppose we deny it. It says the Court's opinion

speaks for itself and whatever they said would be correct. I don't know if he has got any allegations, that's sixteen. We admit paragraph seventeen with the stipulation that the remittitur of the Superior Court of Chatham County of Georgia was signed the order of the remittitur to making the judgment of the Trial Court, making the remittitur of the Supreme Court the judgment of that Court was signed on Monday, January 21, 1955 and that the transmittal of this matter to the National Railroad Adjustment Board was received by the Adjustment Board on January 21, 1955.

[fol. 126] Mr. Miller: As a point of clarification, I believe you said the remittitur was signed on the 21, did you not?

Mr. Myrick: 31st.

Mr. Miller: 31st.

Mr. Myrick: In other words all I am doing is getting the paragraph a little more complete. What you stated there is correct.

Mr. Miller: The Order of the remittitur was signed on the 31st of January, 1955 and was received on the 21st.

Mr. Myrick: We admit paragraph eighteen except that we deny that this case has ever been docketed. It has been filed all right but we say it has not been docketed. We admit nineteen and the same applies to paragraph and the same applies to paragraph twenty-(a). We say again that it has not been docketed. It has been filed but not docketed.

The Court: It has been filed but not docketed.

Mr. Myrick: Yes, sir.

[fol. 127] Mr. Miller: Do you admit all the other allegations in paragraph twenty-(a)?

Mr. Myrick: Yes. And twenty-(b). Twenty-(b) we admit. And Twenty-one we admit. Twenty-two we admit.

The Court: This dispute has been docketed as number A-4755.

Mr. Myrick: Where is that?

The Court: In paragraph twenty-one, that wire in twenty-one. "This dispute has been given Docket No. A-4755" (reading from wire in paragraph twenty-one).

Mr. Myrick: We admit paragraph twenty-two. Now

Twenty-three is really where we get our issue of fact and Judge we expressly deny that.

The Court: Deny twenty-three.

Mr. Myrick: We also deny paragraph twenty-four in a sense. Now the paragraph twenty-five we deny too and paragraph twenty-six we deny. Twenty-seven is conclusions of law which we deny, also paragraph twenty-eight. In other words we deny paragraph twenty-nine for this reason, they say there is only one important controversy in this case and we say there are really [fol. 128] two controversies, so I don't admit paragraph twenty-nine. We deny paragraph thirty. I don't think that paragraph thirty-one requires us to make answer at all. It just says what the Company is willing to do. Paragraph Thirty-two is simply a request for this Court to do something. It doesn't require an answer either.

The Court: That covers it, doesn't it?

Mr. Myrick: In other words there are a lot of documents in there that I have admitted to save the trouble of proving.

Mr. Miller: Is my understanding correct, for the purpose of this preliminary hearing on this preliminary injunction you have admitted those allegations?

Mr. Myrick: That is right. And I will file my answer within the time. I certainly wouldn't file my answer any different from that.

The Court: All right. What is the issue to be determined now?

Mr. Myrick: Well, Judge, under the Norris-LaGuardia Act there are certain findings of fact that you are supposed to make that we contend.

[fol. 129] The Court: I will do that when I prepare my judgment.

Mr. Myrick: There are certain things that I denied in here that he has to prove.

The Court: All right. Go ahead. How many witnesses have you got Mr. Miller?

Mr. Miller: Judge I have three.

The Court: How many have you got Shelby?

Mr. Myrick: I have got one.

Mr. Miller: Judge I would like to call for the purpose of cross examination one of the defendants in this case, Mr. Byington.

The Court: All right. Mr. Byington will you take the stand, please?

Cross-examination.

---

Mr. B. G. Byington (one of the defendants), sworn in, testified.

[fol. 130] Cross-examination.

By Mr. Miller:

Q. Mr. Byington, will you state your name, please sir?

A. B. G. Byington.

Q. Are you one of the defendants in this case?

A. Yes.

Q. Mr. Byington are you an officer of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. Would you state what office you hold?

A. Chairman of the Grievance Committee of the Brotherhood *of* Railroad Trainmen of the Central of Georgia Railroad Company.

Q. Does that mean that you are more or less head local official for the employees of the Central of Georgia representing for your craft?

A. Yes.

Q. Mr. Byington, do you recall when Mr. Kennedy authorized Mr. Chester to call a strike on the property of the Central of Georgia Railroad a short time back by the Brotherhood of Railroad Trainmen?

A. I would like for you to state that question again.

Q. All right, sir. Is it not a fact that Mr. Chester wired the Central of Georgia Railroad Company to the effect that a strike was going to be called at 6:00 o'clock Friday morning, February 18th, subject to the satisfactory settlement of the pending "hose coupling issue"?

A. That is true.

Q. Did that strike go into effect?

A. It did not.

Q. Why did it not go into effect, Mr. Byington?

[fol. 131] A. My understanding of its not becoming effective was due to the fact that the National Mediation Board proffering its services the strike was ordered postponed by President Kennedy pending further negotiations and with the assistance of the members of the National Mediation Board Service.

Q. Is it not true that that strike would have gone into effect at 6:00 A.M., February 18, 1955 had it not been for the intervention of the Mediation Board?

A. I can't say that it would have. In my opinion there could have been an agreement consummated prior to the time.

Q. Assuming that no agreement was consummated the strike would have been called, would it not?

A. Yes.

Q. And I believe you stated that Mr. Kennedy did authorize the postponement of the strike pending mediation?

A. Yes.

Q. And I believe it is true, is it not, that last Monday that the Mediators came on the property of the Central of Georgia and mediation began between the Brotherhood and the Central?

A. Yes.

Q. Mr. Byington, if your organization put into effect the strike on the Central of Georgia Railroad Company would the other Brotherhoods observe your picket lines?

A. I do not know.

Q. You do not know? What has been your past experience on this?

A. We never had a work stoppage so I can not say. Not since I have had anything to do with it.

Q. How about when you were an employee and not connected with it?

[fol. 132] A. The only strike that I recall was in 1946. That was on a national measure. The Engineers and Trainmen came out together at that time.

Q. Isn't it true that the other Brotherhoods ordinarily respect the picket lines in a Brotherhood strike?

A. It is my understanding that any person who don't

cross a picket line will have the backing of their organization.

Q. In other words, if the individual does not wish to cross the line the organization will back them up?

A. To a certain degree, yes.

Q. In other words the other Brotherhoods wouldn't insist on their members crossing your picket lines?

A. I can't speak for any Brotherhood except that one I represent.

Mr. Myrick: Your Honor, I object to this line of questioning. What the other Brotherhoods do hasn't got anything to do with this case.

The Court: What I presume he is after is to show that if there is a strike by one if the Brotherhoods don't observe their picket line it would be a general strike. That is what I presume he is after.

Mr. Miller: Yes, that is it.

Mr. Myrick: I would like to go a little bit further. He could not testify on anything except what he knew of his own knowledge.

[fol. 133] Q. I want to ask you this question, Mr. Byington. Isn't it true from your experience that your Brotherhood respects the picket line of another Brotherhood?

A. To the contrary, Mr. Miller, about the strike in effect, just very recently about the first of the year on the A and S. P. Railroad when Mr. Collins called me over long distance and talked to me in Atlanta and I agreed that our men would handle it explaining that they went in and brought them out from Montgomery.

Q. Is that a strike on the Central of Georgia or a strike on another Railroad?

A. It was a strike on another Railroad but the same craft.

Q. It was on another Railroad?

A. Yes.

Q. Mr. Byington did you not tell, within the last three months, did you not tell certain employees of the Central of Georgia that when your Brotherhood went on strike you were going to set up a picket line, and that they had better not cross those picket lines?

A. I did not. I said if we went on strike we would immediately set up a picket line.

Q. You told the employees of the Central that did you not?

A. I said we would immediately set up picket lines.

Q. That's right.

A. I deny the other allegations.

Q. You deny that you told any employee that no one had better cross your picket line?

A. I deny that emphatically.

Q. What did you tell them with reference to the crossing of your picket lines?

A. Nothing more than what I said. There had been no controversy about crossing the picket lines.

[fol. 134] Q. No, I realize that this is in anticipation of a picket line. You tell the Court here that you did not tell any employee of the Central as to what would happen if some one failed to respect your picket line?

A. Absolutely not.

Q. If any one testified that you told them——

A. If any one testified to the contrary it would be an outright prevarication of facts.

Q. Mr. Byington, is it not true if an injunction is not continued in this case that your organization will go out on strike?

A. That is an assumption you have, I can't answer that.

The Court: Didn't Mr. Myrick admit that?

Mr. Myrick: No, sir.

The Court: Didn't I say if there is anything we could do in the event I didn't grant the injunction if there was any reason you would have the strike and you said no?

Mr. Myrick: No, sir.

The Court: Don't you remember I asked you if there is anything we could do in case I did not grant the injunction to prevent a strike?——

Mr. Myrick: Maybe I said no. I was talking about the Court. I don't know anything the Court can do, there may be something the employees can do.

[fol. 135] The Court: Well, I meant the employees.

Q. Mr. Byington assuming that your organization and the Central can not get together on a rule concerning payment for coupling hose is it not true that your organization would go out on strike?

A. Only time will answer that question, the lapse of time and all that is involved in this case, the many circumstances which surround it, I couldn't definitely say that we would or would not.

Q. In other words you wouldn't deny you would go out on strike?

A. I would say to directly state that we would, would be clearly assumptious on my part.

Q. As I understand you are not the only one to speak on what is done by the Brotherhood, it is subject to Mr. Chester's approval and Mr. Kennedy's approval, isn't it? The President?

A. That is true.

Q. It you wanted to call a strike on the Central of Georgia Railway property and who would call it? Would you do it?

A. No.

Q. Who would?

A. President Kennedy.

Q. There are such things as Wild Cat strikes, aren't they?

A. Yes, there is.

Q. Is a Wildcat Strike a strike on a railroad not authorized by the Brotherhood?

A. It certainly is.

Q. Haven't you actually heard of the definite possibility that the Central of Georgia would be subjected to a Wildcat strike if this issue is not settled?

[fol. 136] A. Absolutely not, and to the contrary I have instructed and advised any man who works under our agreement who comes out or away from his place of employment on an unauthoritatively so on a Wildcat procedure that I will personally take the position that he has resigned his job and have his name removed from the Seniority roster. Those instructions have been issued to every location on the Railroad.

Q. Do you go on record to that effect?

A. Yes. I can assure this Court there will never be no Wildcat strike as long as I have got anything to do with it.

Q. If the Mediator stated that your organization was threatening Wildcat Strikes he misrepresented the facts, is that true?

A. I don't know anything that the Mediator said.

Q. I mean—you didn't talk to the Mediator?

A. Yes. But not in conference with the management.

Q. In other words the Mediator does not talk to both groups together, he talks to each group separately?

A. Unless they agree to a meeting and then he arranges a joint conference. Which never was done in this case. You all had this Court procedure before the Mediator ever got through mediating between the parties. The Mediator was still meeting with us on Friday morning trying to get us together after you all had got the Court injunction on Thursday night.

Q. What did the Mediator tell you Friday morning?

A. He said that Mr. Collins had asked him to wait until 10:00 or 10:30 and that Mr. Collins was at that time going to give him his final answer in the form of a proposal, I figured to reach an agreement. That was on Friday morn-[fol. 137] ing after you all come down here on Thursday night, and got this Court order and it was a great surprise to us for the Marshal to come in on us at noon time. We had no knowledge of that. The Mediator didn't either, unless he lied to us.

Q. You said that Mr. Collins asked the Mediator to wait. Wait for what? What was the Mediator about to do?

A. Just what I said. Just what he told Chester over the telephone. I was sitting there listening to the conversation.

Q. You said Mr. Collins asked the Mediator to wait. Wait for what? Was the Mediator about to leave him?

A. No, not that I knew anything about. He was going to leave——

Q. What was he asking him to wait for?

A. To give him more time to handle his President as I understood it, of the Railroad. The problem that he was up against——

Q. You are not answering my question. You said the Mediator was requested to wait until Friday morning,

what was the Mediator requested to wait for? Wait before he did what? What was the Mediator about to do that Mr. Collins asked him to wait for? Do you know?

A. He was going to dismiss the case from any further mediation and Mr. Collins asked him not to as I understood it.

Q. That's right. Isn't it true that Mediation had been unsuccessful and the Mediator was going to leave? The afternoon of the day that His Honor granted the injunction?

A. Absolutely not. No, you are retracting too far. We had no knowledge of his services being terminated until Friday morning when he said it looked like we were not [fol. 138] going to get no where, but Mr. Collins had asked him to wait until 10:30 that he was going to submit a final order. We did not even then at 10:30 Friday morning know that they had applied to Your Honor for an injunction. We didn't know it until the Marshal walked into the Savannah Hotel around 12 o'clock noon or a little after.

Q. Mr. Byington, isn't it true that when the Marshal came in Friday morning to serve you that you denied that you were the defendant in this case?

A. Well, I just started walking off. He said "Hey Mr. Byington", and I said, "My name isn't Byington". I spied him when he walked in, I knew who he was. (stated laughingly).

Q. You are making a joke of it now but it wasn't a joke when he was trying to serve you, was it?

A. Oh, naturally I admit, I have got sense enough to know Mr. Miller that when a man comes to serve a paper you can't get away from the long arm of the law, and if it hadn't been just more or less of a joke why I certainly would not have tried to walk out. I saw him the minute I walked in the Hotel. I walked right into him. I knew what was going to happen.

Q. Isn't it true you were walking away and he came up and got you?

A. That is right.

Q. You were headed out, weren't you?

A. Yes, I sure was but not in no big hurry.

Q. You denied that you were Byington, didn't you?

A. I did kiddingly. Yes. I later admitted it. I will say on the spur of the moment it was very provoking for me to be confronted with what I term the undermining method that you had used in securing the restraining order.

[fol. 139] Q. Isn't it true Mr. Byington you won't take the position now,—let me re-phrase the question. You won't tell the Court here today that when that order was served that you weren't contemplating calling a strike on the Central of Georgia Railroad. Will you?

A. We were very hopeful and had our hopes built up, Your Honor, that this Mediator would get the two parties together. Frankly and seriously strike is the worst word in the dictionary to me and for me to have to be a party, shoulder the responsibility of all of the men's families that are involved in this dispute certainly would have to be of such grave conditions to justify such believing.

Q. You wouldn't agree now Mr. Byington would you to delay striking until the Railroad Adjustment Board could determine this controversy?

A. Our reason for that Judge is this.

Q. Answer my question.

The Court: I think both of you are getting away from the issue. Go ahead and ask the next question.

Q. The next question that I want to ask him—it is his testimony that it would take so long for the Adjustment Board to decide the question. Would you be willing to settle it by arbitration then?

A. That wouldn't be left entirely to me.

Q. So you can't say whether you would or not? Can you say personally whether you would advocate settling this or not?

A. Personally, I would not.

Mr. Miller: That is all.

[fol. 140] Mr. W. J. Collins, a witness for the Plaintiff, sworn in, testified on

Direct-examination.

By Mr. Miller:

Q. Mr. Collins state your full name and address please, sir.

A. W. J. Collins.

Q. Mr. Collins how long have you been employed by the Central of Georgia Railroad Company?

A. Since July 5, 1912.

Q. Did you ever represent the Brotherhood of Railroad Brakeman as their Officer?

A. Yes, sir.

Q. What position was that and for how long?

A. I was the Committee Chairman——

Q. Is that the same job Mr. Byington has?

A. Yes. February 1, 1943.

Q. When were you made Director of Personnel?

A. I was made Director of Personnel on the 1st of February, 1953, I believe it was.

Q. How long have you been employed by the Central of Georgia as one of their Personnel Officers?

A. I had the Office in Macon since February 1, 1943 until recently when they consolidated. I handled all the train service people's troubles as best I could.

Q. Mr. Collins, you are familiar with the strike that was called by the Brotherhood of the Railroad Trainmen.

A. Yes, sir.

Q. Are you familiar with the controversy which gave rise to that strike?

A. Yes.

[fol. 141] Q. Will you state to the Court what that controversy is as briefly as possible?

A. Well, if I get too far off, I, of cour-e, want to be corrected. Some time quite a while ago a question came up from the Trainmen that it was not their duty to couple air hose. It was more or less a reverse proposition from any I have ever known. It had always been the policy as far as I ever knew that it was a part of their duties. I, myself, had

collected many claims, similar claims from the Railroad for people who do that kind of work. The first I recall the men were signing the time sheets claiming an additional day's pay for coupling hose. I, of course, declined this increase, and there was nothing done about it. Later, when the National Board——

The Court: What year was that?

The Witness: That was about in 1950 when it started. The Railroad put a clause in their counter-proposal asking that where they had ruled paying the penalty payment for coupling hose that those rules be eliminated. That there be no penalties paid and we had no rules and never had had. The thing went on until finally it resolved itself into what we call a National Movement and the various committees on both sides were given a full power of attorney to deal with the questions and we gave our power of attorney, and settlement was finally made but the question as to the air hose coupling was not included as I understand but they settled the air hose question ruling in this manner, it was agreed by the Committies on both sides that the President of the United States, who was then Mr. Harry Truman, [fol. 142] would appoint a mutual arbitrator to come into the question and settle the issues and his decision would be final and binding on both parties. Mr. Truman appointed Mr. George Cheney, an eminent attorney from Long Beach, California who held hearings in Washington, D. C. I need go no further than than, the award speaks for itself. It had been a source of complaint since about 1870, just here and there. So when they moved in on me for a rule——

Q. When was that?

A. I don't remember the exact date it started. 1953, the best I recall, we, of course, didn't agree and the request was filed for arbitration, $1.50 arbitrary.

The Court: What would you have to give that crew? How many people?

A. Well, the man who coupled the hose, and any other help with the coupling a hose.

The Court: Who would be on the crew besides the man?

A. They vary, Your Honor. In some cases we have a rule that requires a minimum for the ground crew, as we call it, the minimum for the ground crew is the foreman and two switchmen. Then we have a crew where we have what we call—all the switchmen call them car riders. They would have five or six men in them.

The Court: And each one would get a $1.50 regardless of whether they had anything to do with the coupling?
[fol. 143] A. That is right. Anybody on a crew, the whole crew. So we never could agree on it and finally the Mediation was invoked and Mediator Cole, and we settled all the questions we had reasonably satisfactory but we never could agree on the air coupling hose and that was left out, so that is when we went to the State Court in Trying to see whether or not our position was correct or incorrect.

Q. What was your position?

A. My position has always been that the Cheney award meant exactly what it said and that it was a common law of arbitration pure and simple and not an arbitration under the Railroad Labor Act or any other statutory provision which would take it out of that category, in other words, my claim in this was that the entire question was to be settled in the manner which they agreed upon. We did settle it and in the award there were two provisions made. There were three. First, the award provided that the Railroads provide a coupling rule by September 1, they had thirty days after that and if they elected to do so could retain that present rule. Railroads could retain a rule of ninety-five cents, and on railroads where they had no rule which was us, and there was many of them, that they could either accept the ninety-five cents rule by notifying within thirty days or they could retain their present practice by notifying within thirty days. So I wrote a letter to Mr. Byington telling him that we had decided to retain our present practice just as we had. And he wrote me back that according to the records he had handled it with President Kennedy and that he understood that the Cheney award was legal in this respect and I held to that position all the way through because I felt that if there ever had been a question settled——

[fol. 144] Q. Mr. Collins the controversy over which this strike was called is that the same controversy which our — outlined to the Judge?

A. Yes.

Mr. Myrick: I object to that question, on the grounds——

The Court: Well, I will admit it.

Q. Mr. Collins the position taken by the Brotherhood prior to the State Court injunction proceeding is the same position taken in this Court of Arbitration, is that not true?

A. Yes. Well there was never anything to agree to, of course, we talked about negotiations and all the way through there, we either had to make a rule or face a strike.

Q. Mr. Collins will you state to the Court what would be the result to the Central of Georgia Railroad in the event this strike is called?

A. Well, it would just be tied up. It would not be operating.

Q. Would the Railroad operate?

A. No.

Q. And the Central, would it be able to run, handle shipments rendered them by its patrons?

A. No, sir.

Q. Would—What would happen to the patrons of the Central of Georgia, how would they be served?

A. Well, they would go on handling the best they could, giving it to the other railroads.

Q. How would the general public be served by the Central of Georgia in the event of a strike?

[fol. 145] A. They would do the best they could——

Q. What would be your statement as to the minimum loss that the Central of Georgia would sustain just for a day if the Railroad was tied up by a strike?

A. Well, based on figures from the 1st fiscal year, I would say it would run around a hundred or Two Thousand Dollars a day.

Q. So the amount in controversy exceeds Three Thousand Dollars?

A. Yes.

Q. Mr. Collins do you have any reason to believe that there would be any violence resulting from the strike?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Myrick: Your Honor, that calls for a conclusion—I object.

The Court: I don't think so.

A. Yes, I have reason to believe there would be.

Mr. Myrick: Your Honor, I reiterate my objection.

The Court: I overrule your objection.

Q. Mr. Collins would you state what you base your fears on and anticipation of violence?

A. Well, naturally, when anything like that happens a picket line is always put up and anybody that goes across it is not looked on with favor and that is how the trouble starts.

[fol. 146] Q. I realize this is all what you anticipate because it hasn't occurred yet but do you have any reason to anticipate that there might be any damage to the property of the Central?

A. Yes.

Q. Would you give your reasons for that fear and state what property?

A. Well, I could not state what property, but in — Company as large as that it is physically impossible to watch all things. I don't want to say anything about anybody—that is true in all large groups. There is always some people that don't do what they set out to do, they go beyond it.

Q. What has been your experience in prior strikes.

A. I never had any on the Central of Georgia Railway. I have been connected with them elsewhere if I may be——

Mr. Myrick: Your Honor, I object and ask that you rule out all the testimony because he said he had never had any experience on the Central of Georgia Railroad and the reason that he gave a minute ago is not based on anything that he could draw his conclusion from.

The Court: Have you ever been connected with any other strikes on any other railroad?

A. Yes. I was called in Chicago——

Mr. Miller: Is what you previously testified to based on your general Railroad experience and that experience is with other railroads?

A. Yes. I was called in Chicago in 1919——

[fol. 147] Mr. Myrick: Your Honor, what some other group of people may do does not concern these defendants.

The Court: He said he was called himself. I think that gets it.

Mr. Myrick: But the actions, what some other people may have done doesn't mean these people are going to do it.

The Court: No, that is what he said. If he had reason to believe there might be violence and destruction of property. And he has given his reasons why he thinks there might be. That's what he said. I'll let you go ahead.

A. I was called in Chicago in 1919 when they had what is generally known as the outlaw strike starting in the Chicago yards and spread to the Pacific Coast. I worked there for weeks trying to—of course, I wasn't doing much, but I worked with Mr. William Doe who later became Secretary of Labor in Mr. Hoover's cabinet. We slept in one hotel and registered in another. We were afraid to stay where we were registered at, and my experience with that is, it's war. That is just about as well as I could describe it. I don't mean to say that happens every time but that is my experience. You couldn't talk to these people.

Q. Well, Mr. Collins, have you heard anything in this present controversy that would lead you to fear damage to person or property?

Mr. Myrick: I object, Your Honor.

[fol. 148] The Court: I think that it could be in this particular case, that is the reason——

A. I have no doubt, based on my experience but what we would have.

Mr. Myrick: That doesn't apply to this particular case.

The Court: You had better ask your question over.

Q. I asked Mr. Collins if you have heard anything from any of the defendants or otherwise that would lead you to believe that there would be damage to person or property in this particular strike, if it comes about.

A. If I may be permitted, I can tell you all I have heard directly. Our Chief Dispatcher, Mr. Cane, told me——

Mr. Myrick: I object to what anybody told him other than what——

The Court: Is he a defendant connected with this case?

A. No, sir, he is an official of our Railroad, he is our Chief Dispatcher at Savannah.

The Court: Well is that in connection with these defendants?

A. Yes, sir.

[fol. 149] The Court: Well it is in connection with——

Mr. Myrick: But that is hearsay. Now if one of the defendants told him anything that would be admissible, but what somebody else told him the defendant said is not admissible.

The Court: I agree with you. Anything that these men might say, but you couldn't say what somebody else told.

A. It would be hearsay what I said of the actual threat. I anticipated that. That's why I asked.

Q. Now have you heard, Mr. Collins, anything for this particular strike that would lead you to believe that other than your general experience that there would be any danger to person or property if there is a strike?

A. No, other than this other thing——

Q. Other than your general experience.

A. That's right.

Q. Mr. Collins, in the event that an injunction were granted in this case by this Court which would, if course, prevent the irreparable injury to the Railroad you testified about, what would be the injury, if any, within your knowledge to the defendants in this case?

A. None that I know of. Since we have proper bond and are still solvent.

Q. Mr. Collins, to your knowledge is there any administrative procedure or any procedure short of recourse to the Courts under which the status quo could be maintained in this case pending a decision of this controversy by the adjustment board.

A. I know of no other possibility.

[fol. 150] Mr. Myrick: Wait a minute John. I didn't hear that question. Would you repeat the question?

Q. The question is Mr. Myrick, that is—is there any remedy through any adjustment board or through any administrative proceedure which would prevent a strike and maintain a status quo pending a decision of this award in controversy by the Adjustment Board?

Mr. Myrick: Well, I object to that, Your Honor.

The Court: I sustain your objection.

Mr. Miller: I realize that is probably a conclusion of law.

Q. Mr. Collins, would it be possible for the Public Officers such as the Sheriff, the Chief of Police and other public peace officers——

Mr. Myrick: I object to that question unless he shows he has already asked them and they said they——

The Court: Well he doesn't have to go that far. He knows from his own knowledge. I will let him answer it.

Q. Mr. Collins answer that question if you will.

A. No, you couldn't have the Sheriffs and police. They couldn't patrol the Railroad.

[fol. 151] Q. Why do you say that?

A. Well, there is too much of it.

Q. Mr. Collins, do you remember the position taken by the Defendants in this case in the State Court decision with reference to jurisdiction——

Mr. Myrick: Your Honor, I submit the record in the case——

The Court: All right.

Q. Do you recall the argument of counsel before the Court on this jurisdictional question?

Mr. Myrick: Your Honor, I still say that the record is the highest and best evidence and I have already agreed

with Mr. Miller that I would put the pleadings in there if he wants them.

The Court: Well, if you put them in there I think it would answer the question.

Mr. Miller: If you have it I would like to look at it.

This is a copy of the demurrer and I would like to ask the Clerk to mark it Plaintiff's Exhibit Number 1 and I would like to introduce it in evidence at this time. I am sure that Counsel agrees to that of plaintiff's exhibit number one which is the demurrer of these same defendants in a case in the Chatham County Superior Court September 30, 1954 in which the first ground states the [fol. 152] petition shows on its face that this Court has no jurisdiction over the questions raised, and the matters involved are within the jurisdiction of the Railroad Labor Board exclusively.

Q. Mr. Collins, that said demurrer was urged at the hearing of the demurrers by the State Court?

A. Yes.

Mr. Miller: Mr. Myrick you stated that you did not agree that you heard the jurisdictional question by brief before the Supreme Court?

Mr. Myrick: Well I said that the decision of the Court did show what I agreed. I would like to make a stipulation. If you recall what I said earlier—I told the Supreme Court that I wanted them to proceed to decide the case on its merits but I was not waiving the jurisdictional question that is all the statements that I made in the Supreme Court.

Q. Mr. Collins, the matter that you submitted on behalf of the Central of Georgia Railroad Company to the National Railroad Adjustment Board which you refer to in paragraph 17 in defendant's petition in this case, is that the same controversy concerning what you had negotiated prior to the——

Mr. Myrick: Your Honor, I object to that. It calls for a conclusion of the witness——

[fol. 153] The Court: What was the question, I did not get the question.

Mr. Miller: I asked Mr. Collins if the—Well, did you prepare and submit to the National Railroad Adjustment Board in January of this year the controversies concerning the whole substance——

Mr. Myrick: I would like for him to ask that question in more detail. I don't object to it.

The Court: Well he can ask it.

Q. You prepared it?

A. Yes.

Q. Are you familiar with the contents of it?

A. Yes.

Q. Did you represent the Railroad in the negotiations in the controversy out of which that strike threat grew?

A. Yes.

Q. Is the controversy that you submitted to the National Railroad Adjustment Board identical to this controversy which is about to give rise to this strike?

A. Yes.

Mr. Myrick: Your Honor, I object to that as it calls for a conclusion of the witness.

The Court: I wouldn't think it would if he said he prepared it himself. This witness testified he prepared it himself and submitted them himself. I wouldn't think it would.

[fol. 154] Mr. Miller: Mr. Myrick it is borne out by evidence he should be qualified to answer that question.

The Court: All right, you can ask it.

Q. Mr. Collins, there has been some question raised as to whether or not your submission to the National Railroad Adjustment Board had been docketed by the National Railroad Adjustment Board. Well now, has it been submitted to the Board?

A. Yes.

Q. Has the Board received it?

A. It has. The Board has received it, and we have an acknowledgment.

Q. Well, when is the case docketed before the Adjustment board?

A. The case is docketed usually after both parties have

been notified it is received and get their answer and then they docket the case in the nature of a hearing.

Mr. Myrick: I object to that, Your Honor, the——

The Witness: The term docket is a non-consequental technicality.

Mr. Myrick: That is a conclusion of the witness, that last statement.

The Court: I think so.

[fol. 155] Mr. Miller: The term docketed didn't mean that the case hadn't been considered.

The Court: They admit it had been filed but not docketed.

Mr. Miller: If you don't docket it, the witness says there is nothing to answer the docket on.

The Witness: If you will pardon me, when they get both sides' answer then they docket the case.

Q. Mr. Collins speaking for the Central of Georgia Railroad Company are you prepared to keep such records and post such bond in this case as the Judge may prescribe in the event he granted a preliminary injunction?

A. Yes, sir.

Q. Mr. Collins would there be any way to measure in Dollars and Cents the damage to the Central of Georgia Railroad Company if a strike is called and the railroad has to cease operations?

Mr. Myrick: Your Honor, I object to that question. He has already asked him that question, that is repitition.

The Court: He said it would be about $100,000. a day as I recall, he didn't say whether ir would be definite.

[fol. 156] Mr. Miller: That's right, I didn't ask him, I don't believe, whether it would be measureable or not all of the injury but all of the damage considered would be measured in terms of dollars and cents.

A. I wouldn't know how to do that. It would be tremendous.

Q. Could you measure in terms of dollars and cents the loss of patrons to the other forms of transportation?

A. Well, we would lose them all for the time being.

Mr. Miller: I have no further questions.

Cross-examination.

By Mr. Myrick:

Q. You stated $100,000. a minute ago, that was a guess, you don't really know?

A. No, I stated that based on past earnings for the past fiscal year.

Q. You know that from your own knowledge?

A. Our past earnings $36,000,000.

Q. Is that the gross or net?

The Court: Well I think the question— -

Mr. Myrick: Well, Your Honor, if he knows the exact amount of damage then the damage is on his record.

[fol. 157] The Court: I think he testified he didn't know.

Q. Mr. Collins, when did you come to the Central of Georgia?

A. Well I came back here in 1912, July 5, 1912. I didn't tell Mr. Miller that but I originally started to work for the Central in 1905.

Q. How long were you gone?

A. I was gone from about 1908 until 1912.

Q. You have been with them constantly since about 1912 with the exception of the dates you mentioned?

A. All the time except when I was on a leave of absence.

Q. How many strikes have there been on the Central of Georgia Railroad in the last twenty years?

A. Oh there has been about two that I recall.

Q. In the last fifteen years there has been how many?

A. I don't know, I would have to check the record. In 1912 we had the strike with the Clerks that was when Mr. Downs was General Manager and then we had the shop men strike. We went through with that. And then we had the Engineers and Trainmen strike not long ago. That was in 1945.

Q. Before that what was the nearest date that you had a strike?

A. Before that?

Q. Yes, sir. Before 1946.

A. I don't remember before that. It was a good while ago.

Q. Now I will ask you this question. Did any violence occur during the 1946 strike?

A. In 1946? No, it didn't last long enough.

[fol. 158] Q. Was there any damage to any property of the Central?

A. I don't recall.

Q. Was anybody injured through violence?

A. Not that I know of. It only lasted about forty-eight hours. That was in 1946.

Q. There has been no other strikes in the last ten years?

A. I said on the Central? I told you two previous to 1946.

Q. I thought you said it was more than twenty years previous to now?

A. I never did give the date positive and I can't. But I know it has been quite a while ago. I can tell you by land marks and things that happened and you can easily verify this. Mr. L. A. Downs just came here and hadn't been here long when he had the shop men strike.

Q. Was that in '22 that Mr. Downs came here?

A. I don't know. I couldn't tell you and be positive about the date. That could be easily verified. We had a lot of trouble when the shop men struck.

Q. When was that?

A. That was along about, I guess it was in the 1920, '25.

Q. That was within the last twenty years, is it not true that there was a great deal less violence in a strike of this sort than there used to be?

A. I don't know. We haven't had but three that I recall, The last one——

Q. The last one you had there was no violence was it?

A. None that I recall.

Q. All right. In May 1954 there was mediation then was there not?

[fol. 159] A. Yes.

Q. Would you state whether or not you accepted their prof-er of arbitration at that time?

A. I did.

Q. Did you do it in writing?

A. I said to the mediator——

Q. Did you write a letter?

A. No.

Q. Did he ask you to give him a letter?

A. No, he didn't ask me for a letter. I said I will agree to it. I said to Mr. Chester that we agreed to arbitrate. We do that now. We never refuse to arbitrate.

Q. Did you answer the copy of this letter addressed jointly to you and Mr. Chester suggesting arbitration? Did he send you a letter suggesting arbitration? This letter right here in other words.

A. Yes, he sent that.

The Court: What is the date of it?

A. May 21, 1954.

The Court: Let me read that letter.

Q. You did not answer that in writing?

A. I don't recall whether I did or not?

The Court: This was a request from the mediator asking for arbitration.

[fol. 160] Mr. Myrick: Well they alleged in the petition that they were agreeable to arbitration.

The Court: There was no agreement there, it is just a request by the mediator for arbitration.

Q. You swore to the first petition in which you filed an affidavit for the petition?

A. I don't recall. I don't think I did.

Q. Did you read it?

A. Yes, I have read everything there is in it.

Q. In the first suit you didn't contend that you agreed to arbitrate before that mediator I just spoke about, did you?

A. I don't recall. Mr. Miller prepared the petition and our position all the way through is that things are settled but I have and did say to Mr. Cole and said to the gentlemen the other day as far as we are concerned we would arbitrate. Let them pick a man and we would pick a man——

Mr. Miller: The petition itself says we agreed to arbitrate.

A. I have always said it.

Q. Now did you agree to arbitrate a request for a change in rule?

A. I agreed to arbitrate the whole fuss.

Q. Are you now willing to arbitrate or negotiate a request for a change in rules as distinguished from the controversy that you raise that the Cheney award is not binding?

[fol. 161] A. Not and separate a*dn* pick out this part of it and will get out of this Cheney award. No, sir.

Q. Well, then you are not willing to arbitrate the thirty day notice for pay for roadmen or yardmen?

A. We are willing to arbitrate the whole question but the Cheney award is the door to the question you compromise.

Q. Has that been your position with the mediator?

A. Yes.

Q. In a sense then you did not agree to arbitration with the mediator?

A. Yes. I agreed to arbitrate the whole question but not to pick it to pieces.

Q. What did he agree to arbitrate for?

A. I don't know, you will have to ask him.

Q. Did you talk with him?

A. Yes, I talked with him.

Q. Don't you have attached to this suit a proffer of arbitration, the notice that was sent to you?

A. I don't know.

Q. The proffer asking you to arbitrate.

A. No. That was the proffer of the——

Q. Now did the mediation board the other day when they met a week or so ago, did they offer to arbitrate that, or offer to see if you all could agree on arbitration? Did the mediator suggest that to you?

A. The mediator laughed at me when I suggested arbitration.

Q. I asked you sir, did he suggest it?

A. No, he did not. He didn't suggest anything.

Q. Does your petition allege that he did, that he offered arbitration and we rejected it?

A. How was that?

Q. Does your petition allege that he offered arbitration and we rejected it?

[fol. 162] Yes. That is a fact. He said that he agreed to all he could do when he got through, asked us if we would do that. Said that to Mr. Cole and will say it to you.

The Court: He said he did. I think it is alleged that he did. He said that he did.

A. Yes we told him. I said that and I say it now. We will arbitrate the whole question.

Q. Now in paragraph twenty-three, will you read the allegations right here? Read it out loud.

A. It says, "In accordance with the Railway Labor Act 545 USCA 155 the mediator endeavored to induce the parties to commit their controversy for arbitration. The Central of Georgia Railway Company was agreeable to arbitration and the defendant Union refused to commit the matter to arbitration."

Q. It says, the mediator endeavored to induce the parties to commit their controversy for arbitration, that is your allegation isn't it?

A. Yes, sir.

Q. Now in your testimony a moment ago is that he did not.

A. He didn't write me but he said, "Would you agree to arbitrate?". I said, "That is what I have been trying to do ever since I have been in this thing." Will they arbitrate? and he said "No."

Q. You don't know whether or not it was offered——

A. No, I don't know. I wouldn't know that because I didn't meet with them.

Q. Well sir, did you have any telephone conversations with the Mediator on the February 25th—of this month?

[fol. 163] A. When was that?

Q. It was on Friday.

A. Yes, I did.

Q. Is it not true that he called you and asked you to give

him his final answer by 10:00 and you asked him for an additional half hour to reply to him?

A. It is not true. I had a date with Mr. Switzer. He had told me on late Thursday afternoon that—he said I can't hold these fellows any longer, they are talking about wildcatting and everything and they are hounding me to turn them loose, and it don't look like we are going to get anywhere and I figure I might as well be on my way.

Q. This was Friday night?

A. No that was not Friday. That was Thursday late Thursday afternoon.

Q. At what time?

A. And I said well——

Q. I said what time, sir, please?

A. I don't know the exact time it was later in the afternoon between 4:00 and 5:00 o'clock, I will say between three, four and five o'clock. I said I will see you in the morning and I said I will give you a ring Mr. Switzer, if it suits you, or you can call me, either one. So he called me about 10:30 and I told him I was very busy which I was at the time, and I would call him a little later and I did call him, I called him around 11:00 o'clock. I said if you can come down I think I can tell you just what we will do and what we won't do.

Q. This was Friday?

A. Yes, and I told him, I said "If nothing else has developed, we can give you the proposition that had just been made before that".

Q. Had you ever answered that?

[fol. 164] A. No, there wasn't anything to answer.

Q. You had not told the mediator——

A. Yes, I told him as quick as he give it to me I wasn't thinking about accepting it. I said if I had been going to accept that you would never had to been down here and we would never had this controversy, and I told him that we couldn't do it and that I just didn't know and thanked him for his services and every thing and he said well I am going to get out of town and going back to Washington this afternoon and he said you will get a telegram from the Office and late that afternoon I got a telegram from Wash-

ington from the Board and that is all the dealings I had with him that day.

Q. And that is the ending of the mediation services that was after this injunction suit was filed?

A. No, sir. It was before it was filed.

Q. Now I will ask you this question. Didn't the Mediator call you at 10:00 and you requested thirty minutes more time in which to give him a final answer?

A. No, sir. There was nothing said about time. The only question was when we were to meet. He called me and I was to call him.

Q. Meet with who?

A. With him. And he was to call me or I was to call him the next morning and that is exactly how *it* was. When I called him I told him, I said, "Well probably you had better come down because I wouldn't want to tell you over the telephone the final on this thing and if nothing else has developed", I says, "You could come down or I will come up there". He said, "I will be there in fifteen minutes."

Q. All right now, you were supposed to have the meeting Friday then?

[fol. 165] A. Yes, and Did have the meeting.

Q. What was the purpose of this meeting?

A. The purpose of this meeting was to do just what he asked me to do. To let him know whether or not we would throw in the towel and give them what they asked for.

Q. So, therefore, the services of the mediation board had not finished as of—

A. It was practically finished—

Q. I am not asking you whether it was practically finished, I am asking you whether it was finished?

A. It was finished on Thursday afternoon when he told me there was nothing in the world that these gentlemen could do and nothing that he could get them to do and he was thoroughly convinced of it, and there was only one answer to it, and that was, we were going to have a strike on our Railroad as quick as they could put it on.

Q. You had not told them what you would do up to that time?

A. I told him all the way through.

Q. Why were you going to have a meeting again Friday then?

A. Well, pardon me, but if you have ever worked for the railroad, something comes up and they won't ever give up until someone builds a fire under them.

Q. I want to ask you this question, do you know of your own knowledge whether or not arbitration was offered by the Mediator to the Brotherhood of Railway Trainmen? I am not talking about what the arbitrator told you, do you know of your own knowledge

A. No, because I did not see them. There is no way in the world I could know.

[fol. 166] Q. Did you communicate such suggestion by letter as you did previously?

A. Pardon me, I want the Court to know all the facts, I asked Mr. Switzer the definite question, was he going to write a letter and suggest arbitration and he said he didn't think he was because Mr. Cole had already done it before.

Q. At any rate, if that is so, then the allegation you have got here in paragraph twenty-three that the mediator endeavored to induce the parties to commit their controversy to arbitration is incorrect? Is that right?

A. I don't know. He told me that they wouldn't do it. It was time wasted. Whether he tried to get them to or not. That is what he come for is to work out a solution. The only settlement was, in other words, to take it and pay them off.

Q. Mr. Collins, are you familiar with the Cheney award?

A. Yes.

Q. Is it not true that under the Cheney award some people get—some Railroads give 95 cents an hour? You testified to that earlier, didn't you?

A. Yes, I did.

Q. Is it not true that where you have a practice of not paying anything that you are entitled yourself to continue not paying them anything?

A. The award speaks for itself. I would like to read it.

Q. Now under that Rule, I ask you whether or not it is true that some Railroads in the country get ninety-five cents?

The Court: He testified they did:

[fol. 167] Q. You have been Chairman of the Trainmen yourself and handled grievances, have you ever known any agreement concerning a definite rate of pay that is ever binding? That was ever made by any Railroad in this Country?

A. I don't know that I could recall on—this is not a rate of pay.

Q. Ninety-five cents per hour for coupling and uncoupling air hose, that is not a rate of pay?

A. No.

Q. What is it?

A. That is a definite amount of money, is it not? Is it compensation?

A. No, it is not. It is not known so in Labor Circles. It is known as an arbitrary where you do something and they pay you extra for it.

Q. Do you contend that the next hundred years that they are going to receive ninety-five cents an hour—

A. No, I don't contend that.

Q. You admit that they can ask for $1.50 then?

A. I don't deny that they can ask for anything but I do deny that they can come in and repeatedly with war where they agreed that the common law of arbitration—

Q. You are not answering the question. I asked you, could the people who get that ninety-five cents ask for $1.50?

A. There is nothing to prevent anyone from asking for anything.

The Court: He answered that.

Q. Isn't that what you are doing at the time trying to stop us from asking for $1.50?

[fol. 168] A. No. The purpose of my suit is to make people respect their agreements.

The Court: I think we should get down to something.

Mr. Myrick: Your Honor, I think this question is very pertinent.

The Court: Well he has answered it.

Q. Is it not true that you rejected that division of the Cheney award that allowed the couplers to receive ninety-five cents and you don't even come under the Cheney award?

A. No, sir, that is not true. There is nothing in the Cheney award that ever applied to our Railroad except the article right here.

Q. What does that state?

A. It says, "Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date."

That is the rule that applied to us and all other carriers that didn't have a rule.

Q. Is it not true that you rejected the rule?

A. No.

Q. You didn't write a letter to the Railroad rejecting the ninety-five cent rule?

A. No.

[fol. 169] Q. What letter did you write? Can you state what it is without bothering the file?

A. I wrote him and told him that under the Cheney award this Railroad Central of Georgia had elected to accept this provision of the award—

Mr. Miller: Is this the letter you are talking about?

Mr. Myrick: Reading the letter,—Did your letter read this way "In accordance with this decision award we hereby advise that the Central of Georgia desires to and will retain its present practice"?

A. Yes.

The Court: Anything else, gentlemen?

Mr. Myrick: Your Honor could I have about five minutes to get a drink of water?

The Court: Sure. Take a five minute recess.

The Court recessed for five minutes.

Cross Examination.

(Mr. W. J. Collins)

Continued By Mr. Myrick:

Q. Mr. Collins do you know of any other Railroad who has taken the position that the Cheney award is final and forever binding?

[fol. 170] A. No, sir.

Q. Do you know of any Railroad who has entered into a rule saying arbitrary or compensation or whatever you want to call it for the coupling after the Cheney award was made?

Mr. Miller: Your Honor, I really don't see the relevancy of the question. I object to the question.

Mr. Myrick: The relevancy of it is whether he claims this thing is final and binding and I am just trying to find out about it.

The Court: What the other Railroads do wouldn't make it final and binding. I think I will sustain the question. What the other railroads do wouldn't make it binding. I am ruling on this case.

Mr. Miller: I can give you any number of reasons why they didn't grant a rule.

The Court: Let's go on.

Q. Mr. Collins you contend in your suit here that the Cheney award applies to yardmen and roadmen or merely to yardmen?

A. So far as the Central of Georgia Railroad has to do with it, it don't apply to either, since we notified them that we would retain our present practice.

Q. The Cheney Award doesn't apply to either one of them?

[fol. 171] A. No.

Q. Well what are you basing the suit on then? That the Cheney award is final and binding then if it doesn't apply to either one of them?

A. You never let me read the last part of it.

The Court: Let him read that last part.

A. (Reading from the Cheney Award) "Individual carriers may elect to accept this rule or retain their present rules or practices without modification by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date." We notified them that was our understanding and in other words we maintain our present practice.

Q. Do you contend that this Court has the right to enjoin the strike by the road men seeking to gain compensation or arbitrary or whatever you want to call it, for the coupling hose?

A. I would not attempt to try to answer. That is the right of the jury of this Court.

Q. Well sir, I am not asking you about the whole thing, I am just asking you, do the roadmen as distinguished from the roadmen and yardmen, or just merely yardmen?

A. Well, with the proposition to divide the roadmen from the yardmen, all the eggs are in the same basket.

Q. In other words you think that the Cheney award dealt with the roadmen and yardmen, and not just yardmen?

A. I am not familiar with that because we did not have anything to do with that.

[fol. 172] Q. Will you read the first portion of this and then see if you can find the reference to rolling a man as deals particularly among the yardmen?

A. "A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreement, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules agreement, interpretations or practices shall be changed to provide for the payment of only 95 cents." Now they had the rule, but incidentally that is not so strict because using the word trainmen, there is trainmen, brakemen baggage masters, switchmen——

Q. At any rate you see nothing in this award proper that would suggest anything about the award being about roadmen? From what you just read?

A. I just read this one paragraph.

Q. All right, do you know anywhere, other than that, that would go to show that the road meant to eliminate yardmen?

A. Yes, it is my understanding that the Railroad was supposed to eliminate the arbitrary pay for coupling and uncoupling air hose where a man was already on duty and that——

Q. That is, of course, what you think?

A. I don't see why they wouldn't give it to one group as well as the other.

[fol. 173] The Court: Q. Anything else Mr. Myrick?

Mr. Myrick: Yes a few more questions.

Q. Mr. Collins do you have the original thirty days notice that they gave you for the demand with you?

A. Yes, I have it in my file.

Q. Do you have any objection to it being offered, if you find it?

Mr. Miller: No, we have no objections if we can find it.

Mr. Myrick: Do you have the original, John?

Mr. Miller: What was that?

Mr. Myrick: The original thirty day notice that we gave for this demand that we made.

Mr. Miller: We have no objections.

Mr. Myrick: In other words, the reason why I am doing that I will offer my copy if the original is not in existence.

Mr. Miller: You could file the copy we surely would have no objection to that.

[fol. 174] Mr. Collins: That would be your copy.

Mr. Myrick: Will you see if you can find your copy of the original? Your Honor, I have got one more line of questioning and I will be through.

Mr. Myrick: Item number nine?

Mr. Collins: All of it, Item number 9 of the entire docket.

Mr. Myrick: Is this the correct copy of what was sent you?

Mr. Miller: As a point of clarification what is he looking at?

Mr. Myrick: This is the original thirty day notice we sent, we tendered under the railroad Labor Act asking for this money.

Mr. Miller: Back in 1952?

Mr. Myrick: That's right.

A. I think this is the same thing, I would like to verify it.

[fol. 175] Mr. Myrick: All right, sir, I don't want to tie you down to it, I just wanted the original to file with the record.

The Court: Go right along Whelby.

Mr. Miller: Suppose you just read it in the record subject to——

A. I will let Mr. Parham Clark check it.

Mr. Myrick: All right we will let him check it while we finish here, it won't take but just a few minutes.

Mr. Miller: Is there any objections to these gentlemen coming in or——

The Court: It is all right. Tell them to come on in.

Mr. Myrick: I have no objections.

Mr. Miller: If we are not going to use them they ought to come in here.

Mr. Myrick: I don't think I have any rule——

The Court: I didn't mean to rule them out this morning. Tell them to come on in?

[fol. 176] Mr. Myrick: John, I believe that you agreed to stipulate in the agreement that you filed before Judge McWhorter and you further, making stipulations to that?

Mr. Miller: Yes.

Mr. Myrick: And you further agreed that I could put in the record Judge Atkinson's opinion so that the case would speak for itself?

Mr. Miller: Yes. While we are on that I believe you also agreed in your stipulation that the copy of majority of opinions the Supreme Court of Georgia has set out in my petition is the correct copy.

Mr. Myrick: Yes. I didn't read it.

Mr. Myrick, Sr.: That's the opinion. The whole opinion is in there.

Mr. Myrick: I am pretty sure it must be right.

Q. Mr. Collins I have got one further line of questioning I want to ask you. I would like to read you from Title 45, Section 155 of the Railway Labor Act,——

"In a case in which any controversy arises over the meaning or application of any agreement reached in mediation under the provisions of this chapter either party the said agreement or both may apply to the mediation board [fol. 177] for mediation board for interpretation or application of such agreement. Said board shall upon receipt of such request notify the parties of the controversy and after hearing of both sides give its interpretation within thirty days." In the event that was the——

Mr. Collins: Would you mind reading that again?

Mr. Myrick: Suppose I let you read it yourself and then I will ask you questions about it.

The Court: He is not supposed to interpret that.

Mr. Myrick: I want to ask him questions about what is he willing to do. He is a lawyer I understand.

The Court: He is not supposed to interpret it.

Mr. Myrick: I know, but he will know how to answer my question if he is a lawyer. I am not asking him to interpret, I am just asking him if he is willing to do something.

The Court: All right.

What are you going to ask him would he be willing to do what now?

[fol. 178] Mr. Myrick: If he would be willing to submit it to that Board. His controversy under that section?

A. I don't think this part has anything to do with it.

The Court: That is what I was afraid of, that you were going to get into an interpretation. Well let's get on.

Mr. Myrick: In other words, you are unwilling to do it because of the reason which you said?

Mr. Miller: Your Honor, I don't understand the question——

Mr. Myrick: The question is—is the railroad willing to submit this controversy to the Mediation Board under Section, Title 45, Section 155.

The Court: Somebody has it before the mediation board

because the man came down here. There was no question about that.

Mr. Myrick: This is the provision which the interpreter used.

Mr. Miller: The Mediation Board or the Adjustment Board?

Mr. Myrick: The Mediation Board.

[fol. 179] The Court: That man has been down here hasn't he?

Mr. Myrick: Yes, sir, but he did not attempt to interpret this agreement. He acted in accordance with the first section of that——

Mr. Collins: The agreements you are talking about is the agreements made by the Mediation Board.

The Court: He wouldn't know. Get his lawyer here and ask him about it. Let's get on.

Mr. Myrick: Well, sir, we might get somewhere on it. I can't ask him a question about some of these documents——

The Court: I don't think you can ask him any question on law, I think that is up to me to determine that.

Mr. Myrick: All these agreements that were entered into on May 25, 1951 and the agreement to submit the matter to the Arbitor appointed by the President of the United States would reach the mediation under this agreement won't it?

The Court: Do you know that, sir, or don't you?

A. I don't know.

[fol. 180] The Court: That is for a lawyer to determine Shelby, I think.

A. When we give the power of attorney why I washed my hands of it.

Mr. Miller: We will agree to the accuracy of the document.

The Court: Is that what you want, Shelby?

Mr. Myrick: Well sir, I just wanted him to answer the question if he could. Whether this agreement was reached through mediation and he——

The Court: He said he didn't know.

Q. Would you be willing to submit it to the Mediation Board if it did have jurisdiction to interpret this agreement?

A. Yes, we have been before them twice.

The Court: All right. Anything in rebuttal?

Mr. Miller: No, sir.

The Court: All right, anything else for your side now?

Mr. Myrick: No, sir.

[fol. 181] The Court: All right, you rest.

Mr. Myrick: John, first could you tell me what was stipulated with regard to what you filed in Superior Court?

Mr. Miller: Let's get off the record and let me read it and see.

(Note. Off the record discussion)

Mr. Myrick: Judge, I will be through here in about twenty minutes.

The Court: Unless you want to come back in the morning?

Mr. Myrick: No, sir, I will be through here in about twenty minutes.

The Court: It would suit me all right if you want to come back in the morning.

Mr. Myrick: I am waiting on John to find out what he is going to stipulate.

Mr. Miller: Oh yes, I was waiting on you. All I am doing is I am trying to find out the exact date——

[fol. 182] Mr. Myrick: Well that is what I thought you were doing, while he is doing that may I read into the record the Item Nine which Mr. Collins has agreed is a correct copy thereof?

The Court: Suppose you give it to her and she can put it in the record easier.

Mr. Myrick: You can just write it down because he has to have it back. It has got a lot of other things in it.

(Off the record discussion closed.)

Mr. Myrick: This was a thirty day notice under Section 6 of the Railroad Labor Act of the Central of Georgia Railroad but—by the Brotherhood Trainmen. It was submitted by B. G. Byington who is the General Chairman of the Brotherhood to W. J. Collins, Assistant to the Vice-President. An Amendment to the Article 41 "coupling and uncoupling of air and/or steam hose, etc. Foreman and

switchmen employed in the yards and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip."

The Court: What is that you are reading now?

Mr. Myrick: This is the notice we gave them that started the controversy.

[fol. 183] The Court: Oh, the notice.

Mr. Myrick: (Continuing reading the notice) "as a condition of this arbitrary allowance said employee may be required to couple and/or uncouple air brakes signal and steam hose, couple and uncouple vestibule curtains."

The Court: All right. That is the notice that you all gave them?

Mr. Myrick: The formal notice required by——

The Court: There wasn't any objections, I mean——

Mr. Myrick: No, sir, but it doesn't show. It is our contention that is what the issue was——

Mr. Myrick, Sr.: Let me understand this, you said in this record Judge Atkinson proceeded to try this case on its merits?

Mr. Myrick: John agreed that I could put it in the record.

Mr. Miller: I only agreed to the accuracy of it. I haven't agreed to the relevancy of it because he states the Supreme Court has ruled that he has no jurisdiction.

[fol. 184] Mr. Myrick, Sr.: All right. He found the case against you all on the merits of this contribution and that the Cheney award is not binding, did he not?

Mr. Miller: That is right and you said he didn't have jurisdiction to decide and that is why we went to the Adjustment Board.

Mr. Myrick, Sr.: And he decided against you.

The Court: There is no question that Judge Atkinson Superior Court of Chatham County decided against the Railroad and then they took the case up and——

Mr. Miller: Your Honor, we show that in our pleadings.

The Court: That is what I said, that's all in the pleadings, and they took the case up and they a cross bill, did they file a petition before Judge Atkinson stating that he had jurisdiction?

Mr. Miller: They demurred, general demurrer.

The Court: Well both sides have agreed here today that the Labor Court had jurisdiction, didn't you?

Mr. Miller: Yes, sir.

[fol. 185] Mr. Myrick: I want to offer this in evidence. Mark it defendant's Exhibit.

The Court: Mark it Exhibit C?——

Mr. Miller: Defendant's Exhibit 2, I believe it is.

The Court: Anything else now?

Mr. Miller: I would like the record to show regarding that exhibit, that we admit to it- accuracy but do not admits its revelency. We deny its revelency.

The Court: Why isn't it revelent?

Mr. Miller: Sir?

The Court: Why is it not revelent?

Mr. Miller: To the extent that it is a ruling over the merits of the case of the State Supreme Co-rt has held that it did not have jurisdiction to rule on them. And as to the question of jurisdiction he was reversed.

Mr. Myrick: According to the opinion it shows what he said about both and you have alleged in your petition what he did in that item.

[fol. 186] The Court: Well you all both agreed for it to go in, is that right?

Mr. Myrick: He agreed for it to go in with that exception.

Mr. Miller: No. I don't agree for it to go in, Your Honor. I don't think——

The Court: Well, I will admit it temporarily.

Call my attention to it later. Anything else?

Mr. Myrick: John, what were you going to stipulate with regards to——

Mr. Miller: Oh, here again I am doing this just to save the difficulty of proof. I do not agree to the revelency or the theorality of what I am about to stipulate. It is stipulated purely for the purposes of saving the defendant the trouble of trying to prove it.

The Court: Well, what is it?

Mr. Miller: It has to do with the petition, Your Honor, that the Central of Georgia filed with Chatham Superior Court. It was considered by——

[fol. 187] The Court: I don't see any need for all of this. I said from the start and still think, I have spent a long

time here today with both sides. There is only one question in the case that I have got jurisdiction to grant an injunction, and you all have got everything in here from the birth of the Lord to the death of the devil today, and I don't see it. You could have got through with this thing in thirty minutes this morning. Both sides, one isn't any different from the other. Go ahead with it.

Mr. Miller: This is what they have reference to Your Honor, that on some time in February, on February 15, I believe it was, we presented a petition for a temporary restraining order, the Central of Georgia filed—requested a temporary restraining order from Judge McWhorter, Superior Court of Chatham County to restrain the defendant from striking pending a decision of this controversy by the National Railroad Adjustment Board. Judge McWhorter granted that restraining Order but requested that we not file it until the following morning. That was about 2:00 P. M. Shortly thereafter we received word from the Mediation Board that this strike had been postponed pending mediation thereupon. I advised Judge McWhorter of this and nothing having been filed in the case he rescinded his order.

The Court: What does that have to do with this case?

Mr. Miller: I don't know, sir.

[fol. 188] Mr. Myrick: I will show you, Your Honor, in just a minute when I conclude my evidence.

The Court: All right. Well I will admit it temporarily subject to objections. Go ahead.

Mr. Myrick: Mr. Chester will you take the stand, please.

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Direct-examination.

Mr. L. E. Chester, witness for the defendant, sworn in, testified on direct Examination.

By Mr. Myrick:

Q. State your name?
A. My name is L. E. Chester.
Q. What is your position with the Brotherhood?

A. Vice President of the Brother*hood of* Railroad Trainmen.

Q. Mr. Chester, are you the Chairman who gave notice to Mr. Collins to changing the rule about receiving pay for coupling and uncoupling air hose?

A. No. The General Chairman gave the notice and properly so. I came into the picture after the General Chairman was unable to reach a settlement on the question.

Q. Were you present in Atlanta, Georgia.

A. Yes, I was.

Q. For what reason were you there?

A. To meet the mediator for the purpose to see if he could mediate this controversy.

[fol. 189] Q. Did that Mediator ever suggest or offer to you the services of an arbitrator?

A. The Mediator did not offer arbitration at any time.

Q. No form of proffer?

A. Perhaps we discussed in a loose sort of way from time to time but no form of proffer of arbitration was given.

Q. When did you consider the efforts of the mediator to be at end?

A. I considered them to be at end some thirty — after we had been notified of this injunction, about 1:30 on Friday when I called the mediator and he told me he had just dispatched a wire to the Mediation Board eliminating their handling the case and all because of the telephone conversation to the Secretary of the Board who had told him he would then dispatch a wire to the President of our Organization and to Mr. Collins, taking the case out of their hands.

Q. And that was about 11:00 on Friday, the 25th?

A. No, it was about 1:30 on Friday the 25th.

Q. Prior to that time—do you have the notes which you made that morning?

A. Yes. I always keep notes on these things.

Q. As far as you were concerned were you still mediating the question or were you going to call a strike that night, or were you still mediating?

A. As far as we were concerned the case was still in mediation. There had been talk on Thursday afternoon of the Mediation Board turning them a loose, so to speak and the Mediator had told me that he had talked to Mr. Collins

and told him that it looked like he was going to have to get out of town and surrender the case. He said Mr. Collins [fol. 190] asked him to wait until 10:00 o'clock Friday morning. Give him time to think it over. We waited on Thursday night thinking there might be a break and on Friday morning——

Q. What occurred on Friday morning, state that please?

A. Well on Friday morning I hadn't heard from the Mediator at 10:00 o'clock so I called him about 10:10. He said he had called Mr. Collins and Mr. Collins had called him and Mr. Collins at that time told him to give him thirty minutes longer and the Mediator suggested that I call back about 10:40 and see what it was about, and I called back about 10:40 and he said he hadn't heard anything, but he didn't feel that he should call Mr. Collins, he later called me and said he had called Mr. Collins' office and Mr. Collins wasn't available. His staff told him he was in the President's office, and he said that he had quarreled with the people down there, and asked that they have Mr. Collins call him when he came out of the President's office. In the meantime we went out for lunch and came back and met the Marshal and these papers was served upon us. It was then that I called the Mediator, having been out of the room a while to—that is when the Mediator told me that Mediation had then and there come to an end. That is the first notice the Organization had that the Mediation Board had relinquished their jurisdiction.

Q. Mr. Chester did you sign any of these agreements?

A. Yes, I was a member of the Wage Committee and my signature does appear on each report of the Wage agreements.

[fol. 191] Q. Now, I will ask you this. Does this agreement, right here, it says "In settlement of differences as set forth in Docket Case No. A-334 of the National Mediation Board, is that where you agreed to all of these things?

A. That is the Mediation agreement. It was signed with members of the Mediation Board closing this dispute out. This dispute had been pending for a good many months. That is a mediation agreement.

Q. Everything in here was reached with the assistance of the Mediation Board?

A. That is correct.

Q. Including the agreements to submit to controversy of whether or not you should be paid for coupling or uncoupling the air hose as the record pointed out awhile ago?

A. That is correct. Those agreements were reached in the office of the Mediation Board in Washington with the assistance of the Board.

The Court: What was the name, what is that board up there that both sides contend has jurisdiction of this case?

A. National Railroad Adjustment Board. That is in Chicago.

Mr. Myrick: Your Honor, may I talk off the record here for a minute? I would like to explain that.

(Note. Off the record discussion)

[fol. 192] The Court: I don't want you to explain anything but I just want to get that name.

Mr. Myrick: I was just going to——

The Court: I thought you said "explain that".

Mr. Myrick: Both sides agreed it had jurisdiction. Now there are two separate contentions here. We are asking for one thing and they are asking something else.

The Court: I know all that, but I just wanted to ask you gentlemen whether the National Railroad Adjustment Board did not have jurisdiction over the controversy.

Mr. Myrick: But the question is—is what is the controversy?

The Court: I know all that, I am not getting at that. I am not asking for that. The only thing I asked him was a simple question Shelby, the name of the Board upon which both sides say had jurisdiction of this question and he said the National Railroad Adjustment Board. I just wanted to get that Board, in giving my opinion I just wanted that.

Mr. Myrick: There is a mix up about that. I could explain it to you if you want me to.

[fol. 193] The Court: Explain to me about what?

Mr. Myrick: About which one had jurisdiction. The Mediation Board or the Adjustment Board.

The Court: I know that.

Mr. Myrick: Sir?

The Court: I know that. But what I was getting at was in my own mind I know what—aside from the record I don't see why you all dip into all this stuff. That hasn't got anything to do——

Mr. Myrick: All right, sir. I am sorry.

The Court: But what I am getting at—is the only thing I am getting that name for is because I know what I am going to decide, I think, and I was getting that name down in my mind before I rendered my decision.

Anyth-ng else gentlemen?

Don't let that get on the record—you can cut that off.

[fol. 194] Cross examination.

By Mr. Miller:

Q. Mr. Chester on Friday morning were you still willing to negotiate with the Mediator?

A. Well we're still willing to negotiate. We were in mediation. We thought we were still in mediation. We wouldn't strike and never would have struck as long as the Mediat-on Board had jurisdiction and we were greatly surprised when this action was taken, because we always thought they preserved the "status quo".

Q. Did you tell the Mediator that you would not have anything more to do with the mediation services?

A. No, we did not do that, we were right there ready to do business.

Q. Did you tell him that you were going to withdraw the men from service? Friday night?

A. No, we frequently told him as we have told Mr. Collins, that the men would be withdrawn if we could not reach a settlement. We had not set any particular date.

The Court: Let me ask you something. You said something just then. You said you told them if it wasn't settled that you would withdraw your men. You would call a strike then.

A. Yes, if an agreement was not reached. If we could not settle this question.

The Court: Anything else now gentlemen?

[fol. 195] Mr. Miller: Yes, sir. Just a question.

Q. Mr. Chester did you agree with the Mediator to arbitrate this dispute in this last mediation?

A. No. Arbitration was not proffered.

Q. You said it was not proffered. Now that is a technical term. Was it discussed between you and the Mediator?

A. Now, I am not positive about that. I think we had some brief discussion of the possibilities of it.

Q. Well, do you agree to arbitrate the problem now.

A. I would not agree to arbitrate the question we propose. I would arbitrate the question Mr. Collins proposes. I'd say there is a difference. Now that is something that as a layman I haven't been able to get out here on the table. The question Mr. Collins has gone to the Adjustment board with, we are certainly agreeable to the adjustment board deciding that which is arbitration, but the question that we submitted, that is a request for a new rule, that is the thing that——

The Court: What you all want is a new rule.

A. That is right.

The Court: That is what I gathered by the petition.

A. That's right. We served notice under the Railroad Labor Act for a new rule.

[fol. 196] The Court: And that is now pending before the National Railroad Adjustment Board.

A. No, sir. That is not.

The Court: Didn't—what did they decide on the new ruling—what did they decide about that?

A. It has been declined, we are still in negotiation for it, and in the meantime Mr. Collins goes to the National Railroad Adjustment Board asking for an interpretation of the Cheney Award.

The Court: What you want—you asked for a new ruling on the Cheney award, and they turned it down isn't that right?

A. We don't mention the Cheney award. We asked for a new rule. We asked for a rule that will pay yard men and road men on the Central of Georgia Railroad—an arbitrary.

The Court: I see, well, that is up there.

A. That is not there. That is not before the Adjustment Board. That is the thing we are handling around down here trying to get Mr. Collins to agree to. This rule.

The Court: But if he agrees to that he just agrees to everything hasn't he? He agrees to pay you what you want hasn't he?

[fol. 197] A. That's right.

Mr. Miller: No further questions, Your Honor.

Mr. Myrick: For the purpose of the record I would like to introduce this. I t-ink that was the second amendment to your original petition.

Mr. Miller: I don't object to that.

The Court: Well then both sides are closed then.

Mr. Myrick: (To the Reporter) Mark that Defendant's Exhibit.

Mr. Miller: I do have one question Your Honor. I want to call Mr. Collins in rebuttal on one point.

The Court: All right.

Mr. Miller: Mr. Collins just answer where you are.

The Court: This is a Rebuttal now.

Mr. Miller: Mr. Collins when did you consider for all practical purposes mediation was terminated in this case? [fol. 198] Mr. Myrick: Your Honor, I object to that because it calls for a complete——

The Court: No, I think—I have ruled against it. Go ahead. He said for all practical purposes.

Mr. Myrick: If you leave those words out——

The Court: Just one minute Mr. Myrick, I ruled he can answer it. Go ahead.

A. Thursday night. Thursday afternoon late just before 5:00 o'clock Mr. Switzer told me that there was nothing else to it, that we either had to face a strike or give these fellows what they want. That he could not hold any longer. That they had been talking about Wildcatting. But he had told them nothing was ever settled in that way, but that they could not hold them any longer. He said I can't hold them any longer.

The Court: That was admitted without objections.

The Court: Gentlemen, you don't want to argue this case do you?

Mr. Myrick: Your Honor, I want to point out one more thing.

[fol. 199] The Court: I have already got my mind made up.

Mr. Myrick: I know, but I want to point out one more thing to you sir.

The Court: Well go ahead.

Mr. Myrick: What I want to point out to you is that we think the evidence shows that the Railroad did not exhaust their administrative reasons with the Mediation Board and under Section 108 is not entitled to an injunction and I would like to read you the Section.

The Court: That is what you read me this morning.

Mr. Myrick: No, sir, I did not read that—this is entirely different.

The Court: All right, go ahead.

Mr. Myrick: This is Title 29, Section 108. "It is our contention that under this evidence the Railroad did not exhaust their administrative remedies which they have alleged they have with the National Mediation Board", now I am not talking about the Adjustment Board. "No restraining order or injunction relief shall be granted to any complainant who has failed to comply with any [fol. 200] obligations composed by law which is involved in a legal disputed question, or had failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation of voluntary arbitration."

The Court: What do you say to that?

Mr. Miller: Judge, I say that even if that is applicable to a part of the Norris-LaGuardia Act, we had complied with that requirement because we had mediated and the mediator had told us there was nothing else for him to do and he wanted to go back on Thursday night to his home and close out the mediation.

The Court: All right. You gentlemen don't want to argue the case do you?

Mr. Miller: I think the argument is on the motion, Your Honor.

Mr. Myrick: Your Honor, that is my other argument, but I don't think I want to reiterate anything else I have already said. That is a separate argument.

The Court: Well Gentlemen, I am sorry, I have tried to call the case, and if I was a little bit impatient with any of you all, the witnesses, maybe I was a little impatient to get through with it but I wanted to give all of you a fair hearing and I have tried to do it. What I am [fol. 201] going to do I think its determined, that this matter should be determined by the National Railroad Adjustment Board I think that is correct, I think you both practically agreed to that. Second I want to hold this matter in statute quo just as much as I can. The Railroad Company is solvent and the bond is solvent. Who is on your bond?

Mr. Miller: The American Insurance Company—The Globe Indemnity.

The Court: The Insurance Company is on your bond. Now if you have a cause of action for these reasons you have a solvent railroad and a solvent bond and if this Board determines this case that the defendant against the Railroad you have a bond on the Railroad Company to get your money out of therefore I am going to make the injunction permanent. And you can prepare the Order——

Mr. Myrick: Your Honor. Are you going to issue a temporary restraining order or are you going to issue a permanent injunction?

Mr. Miller: Your Honor this is a hearing on a motion for a preliminary restraining order.

The Court: That is what I meant. What did I say permanent, I meant temporary, of course. But you can fix [fol. 202] your Order Mr. Miller and I want the order to fully state the statements of fact and conclusions of law.

Mr. Myrick: Now Your Honor, there are two questions that since you are deciding that that I wish to take up here, one being, we contend that your order can not cover Roadmen. It can only cover yardmen.

The Court: What do you say to that?

Mr. Miller: I say, Your Honor, that your Order can cover only those involved in the Cheney award and I think

that your Order should be worded so as to apply only to those involved in the Cheney award.

The Court: Does the Cheney award take both of them, or just one of them?

Mr. Miller: It is my understanding Your Honor that it covers both of them but we will work the restraining order so as to apply only to those governed on the controversy submitted to the National Railroad Adjustment Board.

The Court: All right.

Mr. Myrick: No, sir, the Cheney award is final and binding. If the Cheney award deals only with yardmen it can have nothing to do with roadmen.

[fol. 203] The Court: I want to get settled all those people affected by the Cheney award.

Mr. Miller: That is exactly the way I will word the order.

Mr. Myrick: Their statement of their claim before the Adjustment Board shows only yardmen.

The Court: I want to include in that order everybody who is covered by the Cheney award.

Mr. Myrick: All right. The second thing is I want to point out to you is the bond they put up is totally inadequate. The bond is totally inadequate to protect my clients. For this reason, the bond has no provisions in it that if we win this claim before the adjustment board that we will get pay from the date of the filing of this suit, between that date and the date of the filing of this suit. Second, even if the bond did have any such provision the bond is for the sum of $40,000. and the plaintiff he claims it would run in the neighborhood of $37,000 a year.

The Court: If you want an increase in the bond I will give you an increase, the only reason you got a solvent Railroad here is you after them first.

Mr. Myrick: What about the terms of the bond?

[fol. 204] The Court: Well what you would want would be an increase in the bond.

Mr. Myrick: Yes, sir.

Mr. Miller: I don't object to that. I don't think it's material but I won't quibble on that.

The Court: What were you saying Mr. Myrick?

Mr. Myrick: I am saying that the conditions are not such that if we recover——

The Court: Now listen to this, the conditions of the bond are not such——

Mr. Myrick: —are not such that if we recovered and won the decision before the adjustment board that we could get this pay from the period of the date of the filing of this suit and the date of that decision. There is no protection there under the conditions that that bond is put up.

Mr. Miller: The bond would be to protect you for any damages you might sustain by virtue of this appeal. What your damage would be would depend on what rule——

[fol. 205] The Court: If you all can't get together on the bond I will pass it, but I want you protected.

Mr. Myrick: The bond does not protect us on that right now.

The Court: Well you get a bond that would protect them.

Mr. Myrick: As far as that goes if they are willing to pay us retroactively in the event of an adverse decision we could consent to this thing.

The Court: Consent to what?

Mr. Byington: If they give a bond and make it retroactive we would let it stay in this Court five years.

The Court: Well what about that now—if you give a bond——

Mr. Miller: Well, Judge, let me see if I can state the problem as I see it now. Let's assume the Railroad adjustment Board ruled that the Cheney Award was not permanent and was subject to negotiation after the date of the filing of their suit. Before we would know what these employees would be entitled to after the date of the filing of this suit, we would have to know what agreement was reached between the Railroad and these parties as to payment. Now we would certainly be willing to [fol. 206] post a bond which will indemnity the defendants of any damage they might sustain by virtue of this injunction being issued or the appeal being taken or anything else pending upon the decision, but I don't think that we ought to be required in any bond to contract with these parties that any rule we make would be retroactive.

The Court: Well here is what I was getting at. You have got the Railroad to fall back on, you have got a Railroad——

Mr. Myrick: Your Honor, but we—the bond doesn't have anything to do with that question under its present condition.

The Court: Suppose in other words, suppose the Railroad Adjustment Board would say you were right, then you would want to get your money which was owed you?

Mr. Myrick: Yes, sir.

The Court: Then why couldn't you file against the railroad company?

Mr. Myrick: Because under the terms of the bond——

The Court: I don't mean under the bond, I mean against the Railroad Company by suit. In any suit you have got [fol. 207] to prove it (Note: The Court, to the Reporter): You needn't take this down, we are just talking). You have got to prove your damages.

Mr. Miller: Whether or not it would be retroactive would be a question of negotiation and if we are paying you on a question of strike, I don't -now what would come out if we lose this case.

Mr. Sullivan: Unless you agreed that when it was negotiated, it would be retroactive, you have got no case before them. The assessment of damages would be interim.

The Court: You mean from the date you filed the suit?

Mr. Sullivan: Yes, sir.

Mr. Miller: You do not have at this stage of the game, no, but you do when the rule is finally awarded. We don't know—if there is a rule or not.

Mr. Sullivan: You do if you agree to make it retroactive, yes, unless you do we don't have.

Mr. Miller: That's when the subject should be decided, when this other question is decided.

[fol. 208] The Court: How could you prove it now?

Mr. Sullivan: You could require them to put up a bond which would——

The Court: You don't have to take all of this. (To the Reporter.)

Mr. Miller: Would you enter the date of the filing of the suit?

The Court: You may have something there, John.

Mr. Myrick: Your Honor——

The Court: Well, why shouldn't it be retroactive? They are entitled to their money. They should have it. From the time of this Rule.

Mr. Miller: What we are willing to do Your Honor, is this—keep a record as we have incident--ly since this issue first came up, a record of coupling and uncoupling hose and in the event a rule is finally decided upon it will compensate all the coupling and uncoupling of air hose, and then the question of whether it would be retroactive is decided if it is retroactive we will have a record——

[fol. 209] The Court: I was asking why that couldn't be decided now?

Mr. Miller: As a matter of fact, it can be decided now.

The Court: I want to protect the Railroad and I want to protect these people too.

Now what I am getting at is this—Why couldn't the order state that the bond should be given—(to the Reporter) You needn't put all this down.—why a bond should be given making it retroactive in case this matter is settled?

Mr. Miller: What ever rule is finally decided upon, retroactive to the date of this order.

The Court: Or we could take the date that this suit was filed.

Mr. Miller: From a legal standpoint, I don't see why it couldn't be.

The Court: I don't see any reason why it shouldn't be because the whole thing in this case—suppose you all get together on that order, now I think that is fair,—to go ahead and pass an order that the amount should be—to be determined by this board then the order should be retroactive to the date of the filing of this petition. I think that is fair.

[fol. 210] Mr. Miller: As I understand Your Honor, (illegible). Word the decree so that the conditions will be that we post a bond which would indemnify the defendant for any compensation that they might have lost from the

date of this order to the date that the rule is finally agreed upon.

The Court: I think that's right.

Mr. Myrick: At the rate agreed upon. They might not agree on the $1.50 we asked for, they might agree on something else.

The Court: I think that's fair.

Mr. Collins: How much would the bond be?

Mr. Myrick: Well I think from the testimony here, they testified about $37,000 a year.

Mr. Miller: I think that's about right because the bond we got posted now is $40,000. carrying for a year.

The Court: Let's get to a close now.

Do you want it for a year or two years?

[fol. 211] Mr. Myrick: Well I think a $100,000 bond is acceptable?

Mr. Miller: All right, with a provision—Judge that brings up another question at this time, that the temporary

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The Court: Mrs. Strickland you can go ahead—No use keeping this lady waiting——

Mr. Miller: restraining——

The Court: Put in the Order that it is retroactive after the—in the event that the National Railroad Adjustment Board decides in the plaintiff's—in the Defendant's favor. Retroactive as to the amount that they should recover. And then you submit it to Shelby. If you can't agree on——

Mr. Miller: Judge there is only one other problem and that is of course, that your temporary restraining order expires tomorrow night. I was wondering if it would be agreeable with the defendants to extend that until I have an opportunity to draft these findings and present them to you, I am afraid I could not do that by tomorrow night.

Mr. Myrick: You can present them Thursday?

[fol. 212] Mr. Miller: I would like another five days.

Mr. Myrick: I don't think it would take five days.

Mr. Miller: That depends on——

The Court: Well, there is no rush on it——

Mr. Miller: I will endeavor to have it by Friday.

The Court: I may not be here on Friday.

Mr. Myrick: In other words I will waive it until Friday right now and if you want me to waive it any further you had better ask me about it.

The Court: I have to go up to Rome on Friday.

Mr. Myrick: Why can't you get that by Friday?

Mr. Miller: Well, I hope to be able to Mr. Myrick but I wouldn't if something else comes up. I will do the best I can.

[fol. 213] The Court: I know you will. I think you all got the question settled now.

Mr. Myrick: You going to make the findings or what?

Mr. Miller: I am going to propose them and submit them to you for your consideration. That is going to take time.

Mr. Myrick: Of course, now, as far as the order is concerned I am not going to agree with any findings of fact that you might propose——

Mr. Miller: Well, how about writing me, or call me would be a good idea and I will let you look at them.

Mr. Myrick: All right.

The Court: You present them to him and then you submit them to me and if you have no objections—that will get it.

Mr. Miller: Judge I would like in this Order if you will, to extend it for another five days period.

Mr. Myrick: Five days is Friday, isn't it? In other words I consent. You can waive this thing by consent as I under-

[fol. 214] stand it, five day provisions. I will agree you have got to Friday and if Judge Scarlett is not here Friday, I will agree that you can have until next Monday. If you can, have it ready by Friday.

The Court: Let me ask you something—you all want this just among yourselves, is that right?

Mr. Miller: I think it would probably be better Your Honor, to have it in the record—because there might be some misunderstanding.

Mr. Myrick: Put that on the record, it is all right for me to go on the record that I agreed that the—that I will agree

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The Court: Mrs. Strickland take this down.

Mr. Myrick: By consent——

The Court: Both sides agree by consent—all right.

Mr. Myrick: That the restraining order entered on Feb-

ruary 24 by Honorable Frank M. Scarlett shall be continued until Friday, March 4th at 5:00 P. M.——

The Court: I don't think I am going to be here then. I think I am going up to Rome.

[fol. 215] Mr. Myrick: I will just make it Monday, Judge.

The Court: Make it Monday, that's better.

Mr. Myrick: Where will you be on Monday?

The Court: I will be in Waycross Court, but, you can get me——

Mr. Myrick: What is Monday?

The Court: Monday is the 7th.

Mr. Myrick: (Continuing with the order) Monday, March 7th at 5:00 P. M. at which time the order will expire.

The Court: (adding to the order) This Order to remain in full force until further order of this Court.

If it runs over I will just sign another order.

Mr. Myrick: But Your Honor, you can't do that—that is why he is asking me to agree with him on a time.

Mr. Miller: Judge under the law you can't just continue this order without consent of the defendants——

[fol. 216] The Court: Well you can get your order by next Monday.

Mr. Miller: In order words, I will try to get it before then——

The Court: You are not going to have any trouble with these gentlemen agreeing—That gives you a week from today.

Conclusion

PLAINTIFF'S EXHIBIT No. 1

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA, SEPTEMBER TERM, 1954

No. —

CENTRAL OF GEORGIA RAILWAY COMPANY

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

DECLARATORY JUDGMENT, ETC.

Now come the defendants in the above entitled cause, and generally demur to the petition of the plaintiff, and for grounds thereof say;

1. That the petition upon its face does not set out a cause of action.

2. That the matters and facts set forth in the petition fail to state a cause of action.

[fol. 217] 3. The petition shows upon its fact that the award of Referee George Cheney, Esq. was not forever binding.

4. The petition fails to state a cause of action, as it shows on its face that the matters and facts raised therein come within the purview of Title 45, Section 156 United States Code Annotated.

5. The petition shows on its face that this Court has no jurisdiction of the questions raised, and that the matters involved are within the jurisdiction of the Railroad Labor Board exclusively.

—— ——, Attorneys for Defendants.

DEFENDENT'S EXHIBIT NUMBER 1

May 25, 1951

**Agreements**

**for**

1. Wage Increases

2. Cost-of-Living Basis for Wage Rate Adjustments

3. Rules Changes applicable to Road Trainmen, Yardmasters, Stewards, etc. and for

4. 5-Day Work-week, and Interim 6-Day Work-Week applicable to Yardmen and Yardmasters.

[fol. 218] The remainder of this exhibit is not copies in this record for the reason that it is too voluminous and complicated.

## Defendent's Exhibit Number 2

In the Superior Court of Chatham County, Georgia
Suit for Declaratory Judgment and Injunction
Central of Georgia Railway Company,

vs.

Brotherhood of Railroad Trainmen, Et Al.

### Opinion and Judgment on General Demurrers Statement of the Case

Central of Georgia Railway Company sued the Brotherhood of Railroad Trainmen, Local Lodge No. 721 of the Brotherhood, Z. P. Logan, President, W. A. Nealey, Secretary thereof, L. E. Chester of Florida, Individually and Deputy President, and others, and alleged the Brotherhood, and unincorporated association of Cleveland, Ohio, is the accredited bargaining agent of the "Brotherhood";

That there are about four hundred and fifty (450) trainmen and yardmen employed by the Railroad Company who reside in Georgia, Alabama and Tennessee who are members, and defendants named in the petition are representatives of the class consisting of all the trainmen and all the yardmen employed by the Railroad Company who are members of the "Brotherhood."

[fol. 219] That in 1950, the Class 1 railroads of the United States including Central of Georgia Railway Company, and the operating Brotherhoods, including those mentioned in the petition, bargained for months on certain matters but failed to agree. The Federal Mediation Board was called in under the Railroad Labor Act, but failed to get the disputants in to accord. Then the President of the United States appointed an Emergency Board under authority of the Railway Labor Act, which made its findings.

The Brotherhoods declined to accept these findings, and asked the President to take control of the railroads.

On December 21, 1950 the disputants agreed upon a memorandum in which they set forth certain questions on which they would continue to bargain.

On May 25, 1951, they agreed upon wages, and rules applicable to road trainmen, yardmen, yardmasters, stewards,

etc., and for a five-day work week, but did not agree upon the question of "more than one class of road service" and "air hose coupling and uncoupling." As to these subjects, on the same day they agreed (plaintiffs' Exhibit "A") that the questions still in contest should be referred to a Referee to be appointed by the President of the United States and they agreed that "the decision of the Referee shall be final and binding on the parties, and shall become effective thirty (30) days from the expiration . . . of notice to the carrier and the employees' committees . . . of the decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules".

[fol. 220] The Presdent appointed as Referee George Cheney, Esquire, who held hearings, and on August 1, 1951, released his award, which is in the Record by Amendment as Plaintiffs' Exhibit "D".

The Statement of facts and findings of the Referee on the questions at issue appear on pages 27 to 30 in the Referee's findings (Exhibit "D").

The case was argued and submitted on General Demurrer, to the Petition as amended.

There were two main questions involved, viz: (1) Jurisdiction of Subject Matter, and (2) Questions on the Merits of the case.

Questions to be Determined

The General Demurrer contains six (6) grounds; The fourth and fifth grounds deal with the question of jurisdiction of this Court over the subject matter. No question of territorial jurisdiction, i. e., venue, is involved.

Opinion of the Court Jurisdiction.

Counsel for the contending parties have dealt with the jurisdictional feature out of sequence, we will follow their order and will consider first the jurisdictional question as stated in the fourth and fifth grounds of General Demurrer.

The questions here raised are not novel but have several times been considered by eminent authority.

[fol. 221] The Georgia decisions according to Plaintiffs hold that in suits involving the interpretation or application

of agreements between a carrier and its employees, the Georgia Courts have jurisdiction.

Evans vs. L. & N- RR Co. 191 Ga., 395 Central of Ga. v. Culpepper, 209 Ga. 844.

Defendants' attorneys cite to us respectable authority to the contrary that this jurisdiction is exclusively in the United States Courts.

Steele v. L. & N. RR. CO., 323 U. S. 192, Green v. Obergfell, 121 F. 2d, 138, Order of Ry. Conductors v. Sou Railroad 70 U. S. S. Ct. 585, Slocum v. Delaware Ry. Co., 70 S. Ct., 577. The opinions of both Courts are impressive.

However, trial Courts of this State are bound to follow the State Supreme Court, until reversed or set aside and the Georgia Supreme Court having spoken last on the subject, we must hold with the plaintiffs upon the question of jurisdiction.

The Merits of the Case

It appears that a proper intepretation of the finding of Referee Cheney will control this case.

The agreement under which the reference to Mr. Cheney was had, provided (Article 3, of Exhiibt B), that the decision of the Referee shall become effective 30 days from the date of the Referee's findings, and each carrier shall make its election within that period in accordance with the saving clause provision of the proposed rules.

[fol. 222] For Rule see award of Referee Cheney (Page 30 of Plaintiffs' Exhibit "D"), viz:

"A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements interpretations, or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agree-

ments, interpretations or practices shall be changed to provide for the payment of only 95 cents."

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date."

The entire finding of the Referee appears in Exhibit "D".

On September 1, 1951, the Assistant to the Vice-President and General Manager of the Central of Georgia Railway notified the General Chairman of the "Brotherhood" that his company rejected the proposed new rule with respect to yardmen coupling and uncoupling air, steam and signal hose in this language.

[fol. 223] "In accordance with this decision and award. you are hereby advised that the Central of Georgia Railway Company desires to and will retain its practices without modification with respect to Item (1) above."

Compare Exhibit Art 3 of Exhibit A. Letter from Central of Georgia Railway Company, Exhibit B. Last page of award of Referee Cheney, Exhibit D and Paragraph 12 of the petition.

In our opinion, the letter from the Central of Georgia Railway Company of September 1, 1951 (quoted above) takes out of the award of the award of Referee Cheney, all findings with respect to the coupling and uncoupling of air. steam and signal hose on the Central of Georgia Railway, and throws that subject back on its status occupied before the award.

It would be manifestly unfair to permit the Railroad to reject the award, as it affected those defendants, and then claim that a prior custom on this subject has become a part of the contract by reason of the Cheney Award.

The question at issue was unsettled before the award, and by reason of the Railroad's letter of September 1st, 1951 is still unsettled, in our opinion.

Final and Binding

The Court does not wish to leave an impression that it has approved the entire contract as written by Referee Cheney.

[fol. 224] Petitioner argues that the finding of the Referee is "forever binding", or is "to run indefinitely", and the rules established, as construed by plaintiff are to continue forever.

It has long been a rule in Georgia, and I believe, in most states, that employment contracts are to be limited as to time of duration and territory.

In *Bentley v. Smith* et al. 3 Ga. App. 242, Justice Russell in writing the opinion stated:

"4. A contract for permanent employment continues indefinitely and is terminable by either of the parties at any time."

To the same effect is *Green v. Obergfell*, 121 Fed 2nd 46. 138 A.L.R. 253, see page 284; and notes.

In *Stelling v. Richmond County 81 Ga. App. 571*, on page 576, the Court citing the above case stated:

"He alleges that he was a 'permanent employee'. This is perfectly consistent with his indefinite status for, in the absence of specific contract or legislative enactment, 'permanent' employment is indefinite, and may be terminated by either party at any time."

It is worthy of note that in Title 45, Section 158 (j) dealing with agreements to arbitrate and what such agreements shall contain, the following is provided:

"Shall provide for a date from which the award shall become effective and *shall fix the period during* [fol. 225] *which the award shall continue in force.*" (Underscoring added.)

We cannot follow plaintiff's claim that Mr. Cheney's award if "final and binding and not subject to change, *modifications or negotiation at the demand of any* party" (underscoring added), as claimed by plaintiff on page 12 of its Petition.

The position of petitioner does not appeal to this Court of equity, where a perpetual injunction is invoked that would hinder and impede occupational improvement, as well as being without law or sufficient facts to sustain it.

Judgment

The Court thereupon overrules the fourth and fifth grounds of General Demurrer, sustains the first, second, third and sixth grounds of General Demurrer and dismisses the case.

The Temporary Restraining Order granted May 25, 1954, is hereby set aside and revoked.

And It Is So Ordered.

This July 1954.

—— ——, Judge, Superior Court, E. J. C. of Georgia.

[fol. 226] At Chambers

Ten O'Clock A. M. Friday, March 4, 1955

Colloquy Between Court and Counsel

Mr. Myrick: Judge, as I stated a moment ago, for the purpose of the record rather than go all through this I will file this objection——

The Court: What is that, objections to the Order?

Mr. Myrick: Objections to the Order, sir.

The Court: Objections to my findings.

Mr. Myrick: Yes, sir, as proposed by Mr. Miller.

The Court: Well, let me see it just one minute. Objections to my granting temporary injunction order because of sufficient facts——

Mr. Myrick: That is why I said I was just going to file it.

The Court: I have already decided that——

[fol. 227] Mr. Myrick: I understand that sir, I am just filing it so that it won't appear that I am necessarily consenting to anything in here.

The Court: I don't think you have consented.

Mr. Myrick: All right, sir.

The Court: "Defendants strenuously object to the inclusion of roadmen in the decree" (reading from defendants's objections).

Mr. Myrick: That is one of the major issues that I wanted to discuss with you here this morning.

The Court: Get down to four, that's where you started. Waiting on the order. The other is just that I erred in making this——

Mr. Myrick: Well there are three major things I want to clarify and if you just consider that filed I think probably I can clear them up.

The Court: You have a copy, Mr. Miller?

Mr. Myrick: Yes, I gave Mr. Miller a copy last night.

[fol. 228] The Court: Down to four. Down to Four, that is ju[illegible] I erred in my determination the law in this case, isn't that right?

Mr. Myrick: Yes, sir. Now Judge the three major things that we have to consider here I will take them up one by one and we will cover each one as we come to it, if that is the way you would rather do.

The Court: Go right ahead.

Mr. Myrick: Now the first thing I believe Mr. Miller and I are pretty nearly in accord on and that was the question how the bond was framed. When I first saw these papers I did not consider that the bond and the Order calling for the bond met what the Court had instructed Mr. Miller to do. Since that time I submitted to him what I proposed would be in the order and would be in the bond as I understood this Court and I think Mr. Miller and I are in substantial agreement on that.

The Court: On the bond?

Mr. Miller: On the bond, yes, sir.

The Court: Well you all agreed on that——

[fol. 229] Mr. Myrick: Last night, I thought we were apart but we have gotten together since then. That is one of the three major issues that has been eliminated, since he agreed to the substantial language that I submitted to him.

Mr. Miller: It is my interpretation Your Honor that we have agre-d on the substantial language.

The Court: Well, if you have. I don't want to be bothered with it, if you have.

Mr. Myrick: Now the second major contention here is that he has included in the injunction not only yardmen but trainmen. Now you remember I pointed that out the other day.

The Court: In other words you want roadmen in there?

Mr. Myrick: No, sir. He wants both roadmen and yardmen in there. Now I understood Your Honor to say that you meant for this injunction to cover everybody that was

covered by the Cheney Award and that only. Now the q-estion is before the Court and I thought it would be better to raise the point——

The Court: I want to include everybody who interferes with this order—I want to include everybody who interferes with this order enjoining them from interfering with [fol. 230] the people under the present price. I don't care yardmen, or roadmen, or engineers or anybody.

Mr. Myrick: You mean whether or not they are——

The Court: I don't give a darn what you call them whether the roadmen, yardmen or what I just don't want them to interfere with this order relative to the strike or relative to the situation or whoever in abeyance that they—the question as to who gets the money for it.

Mr. Myrick: As I understand the petition, if I may go over this just briefly, the petition asks that we be enjoined only from seeking to negotiate or to strike to cause the Central to give us a rule which would require pay for coupling and uncoupling air hose. Now the plaintiff's contention in this case is that we can not do that for that the Cheney Award is final and binding. Now what the contention that I want to point out to you here is naturally they might want a whole lot of other things that I don't think——

The Court: Suppose I just give an injunction against the yardmen, the roadmen would come in and start to trying to get more pay—what about that?

Mr. Myrick: That's right, Your Honor. The question is what——

The Court: I am not going to let anybody go on strike, unless I have to.

[fol. 231] Mr. Myrick: Your order is not meant to cover anything but this one issue.

The Court: I don't want anybody that this order could cover—in other words, I want the situation to stand statute quo until determined by the mediation board, I don't care what you call it. I want everything in statute quo.

Mr. Myrick: All right, sir.

The Court: Because if I didn't I would leave it wide open. What is your contention, John.

Mr. Miller: Your Honor, as I see what Mr. Myrick is bringing out, he is saying that when the matter is submitted

to the Referee Cheney for decision that the only people involved in the Cheney decision is the yardmen. Now, he says that he wants it briefed so if the roadmen want to insist on the extra pay for this coupling that they be permitted to do so.

The Court: I couldn't do that.

Mr. Miller: Now, my position, Your Honor, is that back in 1953 when the Brotherhood made demands they made demand for arbitrary pay for pullman and switchmen and trainmen employed on local switch assignments and local [fol. 232] freight assignments so we take the position that anybody involved in this proposed rule that they demanded which we have submitted to the adjustment board should be restrained from demand in pay.

The Court: What I want to do is to hold the thing in Statute quo. I don't want to pass and give an injunction to the Yardmen and the roadmen strike. That would be foolish.

Mr. Myrick: Well, Your Honor, I know I don't agree with you, but I thought it only fair to the Court to point this out because if I appeal the case that would be one thing that I object to and I wanted to give the Court the opportunity of having heard from me on it first.

The Court: I am never critical of a lawyer who tries to argue his case.

Mr. Myrick: I know sir, but I think it is only fair to bring up the point right now before the Court and not wait and not say anything to you and then go before the Court of Appeals and bring it up.

The Court: In other words you contend the word yardmen under that decree would cover the roadmen?

Mr. Miller: Yes, sir, we contend the Cheney award so effected this demand of the employees in 1953 that they— [fol. 233] the employees should not be permitted to try to enforce their demands growing out of this rule case.

The Court: Well, I am going to stick with it.

Mr. Sullivan: May I ask you something?

The Court: Yes, sir.

Mr. Sullivan: I am Mr. Sullivan. The sole basis, Your Honor, is the Cheney award. The Cheney award applies to no one but yardmen.

The Court: I am apart from you on that, yes. I am with you on that Mr. Miller. I am just not going to pass up the yardmen and have the road men go on strike, that would be absurd as far as the order goes. What I am getting at, Mr. Sullivan, is to try to get this matter statute quo.

Mr. Sullivan: Certainly as far as the Cheney award is concerned that is the——

The Court: And this will go along in line with my contentions—In other words——

(Note—Judge answered the telephone)

[fol. 234] Mr. Myrick: Excuse me a minute Judge, I want to clarify in my mind what you said that Mr. Miller should put in this order. I understood that you mean for h-m to put in this order that the Cheney award covers both yard men and roadmen and therefore be enjoining both of them from striking.

Mr. Miller: I understand what the Judge means. The Judge explained why he feels the trainmen should be enjoined pending a decision as well as the yard men. He does not refer to the Cheney award.

The Court: That's right. I wouldn't say that the Cheney award does that because then that would leave it open for attack. I think you have got it covered. Your statement is clear.

Mr. Sullivan: Well Judge, I have another point.

The Court: That's all right. I am glad to hear from you.

Mr. Sullivan: As Mr. Miller said, my point has been well taken if the Cheney award applied only to yardmen, my point is the Cheney award does apply only to yardmen, particularly the order——

The Court: I have made up my mind on this. I didn't think so till you all came, but you base that on what you did. Now what was the next?

[fol. 235] Mr. Myrick: Now the third thing Judge is something that I did not get a chance to explain the other day and I don't want to leave any misunderstanding as to my position with the Court and I want the Court to fully understand and have it in the record as to what my position is on this point, I don't want to—the Court to think if I take the case on Appeal that I have said someth-ng that

is contrary. Now the question is this. You asked me the question the other day, did I agree that the National Railroad Adjustment Board had jurisdiction? You asked me that question several times. At first I said no, then you——

The Court: Then you said "yes". Then you came on down and didn't cover all together, you made an exception there.

Mr. Myrick: Now here's what I want to fully—if you give me about five minutes—outline what my position is on that.

The Court: That's all right—go ahead.

Mr. Myrick: My position is and I stipulated certain things and denied certain things the other day over the machine. One of the things that I denied was that the second amendment to the original petition in the Superior Court was not material. He said it was not a proper statement to this complaint therefore he did not have that attached to this suit. Now the second amendment, [fol. 236] I am not clear on this, but contained that document that I introduced in evidence either as my exhibit three or four. Now if that amendment is not a part of this suit my contention is that the suit would show on its face that the National Railway Adjustment Board would have jurisdiction. That's why I answered you "yes" for the purpose of a motion to dismiss. For the purpose of the motion to dismiss we contend that the National Railway Adjustment Board has jurisdiction.

The Court: In other words, what you are getting down there is this, that you didn't admit that the National Labor Board had jurisdiction, is that right?

Mr. Myrick: Yes, sir.

The Court: Well, I think——

Mr. Myrick: Wait a minute, wait a minute, I want to get——

The Court: What I think is this. I think at first, I understood you to say you did, but then later on you didn't. I thought you would come back so I wrote out a little something this morning that after I heard it yesterday that there might be some doubt about it, that you agreed to it. Here's what I wrote——

The defendant impliedly agreed that the National Railroad Adjustment Board has jurisdiction in this case by [fol. 237] the evidence submitted in this case including their claim that the National Railroad Adjustment Board had jurisdiction in an identical case in the Superior Court of Chatham County of Georgia referred to in this suit.

Mr. Myrick: No, sir.

The Court: Well, now, that is my understanding.

Mr. Myrick: In other words, I just want to finish what I have to say completely. Now for the purpose of the Superior Court case was heard only on demurrer just as it was heard first on motion to dismiss. Now on the face of the petition, on the face of both petitions it would appear that the Adjustment Board would have jurisdiction. Now, my contention is that after we introduced evidence the other day we proved by introducing the document known as the May 25th agreement, we proved that the submission agreement submitting the same to the Referee Cheney arose out of the services of the Mediation Board and I proved that by Mr. Chester whose signature is on this page. Now then, sir, that means proved by the evidence under Section 45——

The Court: This isn't what you—this is what I am deciding.

Mr. Myrick: I know that, sir, but I am just going to tell you what my contention is—I didn't get a chance to fully [fol. 238] answer that the other day. Having proved that by the evidence, it didn't appear on the face of the petition, now for the purpose of the motion to dismiss, but having proved that by the evidence it is my contention the Title 45, Section 155, should apply which reads as follows: "In any case in which a controversy arises over the meaning or application of any agreement reached through mediation under the provisions of this Chapter is party to the said agreement or both may apply to the mediation board, for an interpretation of the meaning or the application of such agreement."

The Court: I know exactly what you mean Shelby, but what I am getting at is this. What I am getting at is this. I am not saying you agreed to this, I am saying this is my opinion, in other words I am not saying you

agree to anything, I am eliminating that because if you say you didn't mean that why I am taking your word for it but it was my impression and the record shows that you had agreed the Mediation Board did have jurisdiction but if you said you didn't intend it that way, that's all right with the Court. But what I am deciding is this see—That the defendant impliedly agreed, you are not agreeing to this, this is what I am deciding, and I want you to put this on a separate sheet of paper so I can give it to them, when they leave here. You will eliminate that paragraph and put this, and now I know neither one of you are going to agree with me on it nobody up here, but this is what I am deciding,—The defendant impliedly agreed that the National Railroad Adjustment Board has jurisdiction in this case by the evidence submitted in this case including the claim of the defendant that the National Railroad [fol. 239] Adjustment Board had jurisdiction of an identical case in Superior Court in Chatham County, Georgia referred to in this suit.—Now that's my opinion, that isn't what you agreed upon. Because when you say you didn't say that I am taking your word for it. It is in the record and what you say, I am taking your word for it.

Mr. Miller: Judge, May I ask Mr. Myrick for a point of clarification as to his position?

The Court: Yes.

Mr. Miller: Are you taking the position that from the evidence shown in this preliminary hearing that the mediation board has jurisdiction and not the National Board?

Mr. Myrick: That is precisely my position. For the purposes of the motion to dismiss or demurrer your petition shows on its face that the Adjustment Board would have jurisdiction but when we got down to the evidence and proved that this Commission agreement arose out of the services of the Mediation Board it is my contention that under that evidence the Mediation Board and not the Adjustment Board has got jurisdiction of the controversy.

Mr. Miller: You are taking the position that if the National Mediation Board has jurisdiction over this matter the National Railroad Adjustment Board would not have? [fol. 240] Mr. Myrick: That is correct.

The Court: That is for you all to argue if you carry it up, don't see where——

Mr. Myrick: Now—sir, now, sir——

The Court: From what I can understand in this case, where both of you are protecting your contentions both of you are not losing a darn thing, if you win—if this Labor Board hasn't got jurisdiction, well then you win, you have got a bond——

Mr. Myrick: Well, may I explain that sir?

The Court: Yes.

Mr. Myrick: You understand that you can't write anything in the rule, in this order that they have got to give us this rule. They don't have to give us this rule. We may never get the rule.

The Court: What do you mean, rule?

Mr. Myrick: The rule—contract provision granting my client's this arbitrary.

[fol. 241] The Court: Well you have collective bargaining——

Mr. Myrick: If it comes down to collective bargaining they may never agree to it, so we are not necessarily fully protected but we are protected——

The Court: What do you mean, what you mean is this if the National Labor Board does decide on its merits, is that what you mean?

Mr. Myrick: No, any board, either board, that might have jurisdiction to decide the controversy, in favor of my clients. That still doesn't mean that we are going to get a rule.

The Court: Going to get a rule, what do you mean?

Mr. Myrick: Giving us this pay for coupling and uncoupling hose.

The Court: You may not get what you ask for but I think——

Mr. Myrick: No, sir, that is not the controversy that is before them, the controversy before them is whether or not the Cheney award is final and binding. They decide that and then we still got to get a, negotiate a rule with the Company——

[fol. 242] The Court: I never saw a case that would do that——

Mr. Myrick: The fact of the matter, it might.

The Court: You wouldn't have any trouble getting your money then.

Mr. Myrick: Judge, I would to make one request that in the event this record is written up that my explanation of what I said or didn't say the other day that I made this morning be included in the record.

The Court: Oh, man, I couldn't put all that in record?

Mr. Myrick: Well, I just made a short statement.

The Court: Short, you don't know how much you all talk. Then I would have to put his—I don't think that would be proper. Suppose you write what I told you off Mrs. Strickland. Any other objection to this?

Mr. Sullivan: Yes.

The Court: What else then.

[fol. 243] Mr. Sullivan: It is this, Your Honor, it is just good law to try the case on arbitration of the strike of the Federal Railway Labor Board——

The Court: Well, you all have been trying to arbitrate. I didn't bring this suit. They brought this suit is true but if they hadn't there would have been a strike, wouldn't there?

Mr. Sullivan: That will be the effect of it. That will mean there will be no more settlement on the basis of arbitration.

The Court: I don't think that at all. I can't follow you on that. This is just an individual suit. Suppose you copy that and give it back to me about the defendant. Give me that one short statement. But I couldn't put all that in the record. You have to protect yourself in the case, not carry it up to have all that, it will be a part of the record—not in my judgment.

Mr. Myrick: I meant a part——

The Court: Certainly, Certainly.

Mr. Myrick: Both of these things be heard in it. That is all I meant. I don't want you to put all that in, I just want my explanation in the record of the case. That is all I meant.

[fol. 244] The Court: You just copy that one note. You can go ahead and get that—we are going to talk now.

Mr. Miller: I'd like this in the record, Your Honor.

There is another one the question of jurisdiction here. You are taking the position from the evidence submitted in the hearing on this preliminary injunction that the National Mediation Board has exclusive jurisdiction. Now do you deem that the Mediation Board has exclusive jurisdiction to the excluison of any Court?

Mr. Myrick: Yes, to the exclusion of any Court until they determine it.

The Court: Okay now, suppose you copy that one thing. Anything else, I would be glad to—I don't want to be abrupt——

Mr. Myrick: No, sir, that is all——

The Court: I will put all that in the record. I thought you meant in this order.

Mr. Myrick: I didn't mean that.

The Court: I am sure I would put it in the record.

[fol. 245] Mr. Miller: Shelby, do you want to be heard on these other points?

Mr. Myrick: Judge, the most of them, some of them I think Mr. Miller agreed with me. He has got Savannah in there, and now there is one other thing I think maybe we can touch on here, I don't think it matters too much, but I would like to—Mr. Miller to state what his contention is by using the word. Throughout this proposed finding he uses the word the arbitor Cheney instead of the word Referee Cheney, now——

The Court: What now?

Mr. Myrick: Instead of the word the Referee Cheney. Now it is his contention——

Mr. Miller: That won't make any—the arbitor——

Mr. Myrick: I think it may—I think maybe he might think that might reinforce his position as this is common law award by using that word. If he had any reasons for using that word——

Mr. Miller: I think Shelby thinks maybe I am trying to slip something in there.

[fol. 246] The Court: No, neither one of you would do that. You know when you made that statement this morning I figured I said, well Shelby will say that is doubtful, if you meant it that way, I will call you. I know people I think. What I am going to do is render my

judgment and eliminate what I said that you agreed to in there, because if you tell me you didn't do it, you didn't Do it.

Mr. Myrick: Well I did for the purposes of the motion to dismiss, but not for the purposes of the evidence. That's what I was trying to explain.

The Court: Well that's all right. Because I knew you did at first but that was for purposes of the motion.

Mr. Myrick: That's right.

The Court: That's all right. Take it out. Now you understand in lieu, both of you understand in lieu of where I said that the defendant admitted to the jurisdiction the first time, let her write it and you bring it and you bring it to me and I will sign it.

Mr. Miller: I am going to have to get, of course, all this retyped in final form and I am going to need additional time beyond Monday.

[fol. 247] The Court: Will it be all right, Shelby?

Mr. Myrick: Judge I certainly will agree to give him another time because it is at my insistence that he didn't sign this order today and he has got to get a bond out to Atlanta, as I understand, sir, so he couldn't possibly get it by Monday. How long do you want, John? I would like to ask you that question first before I——

Mr. Miller: I can get it prepared with the Judge's order by the end of next week, I would like that much time. I am just wondering if the Judge will be available by then?

The Court: I will be in Waycross or Brunswick. If I am not over here, come on over there.

Mr. Miller: Shelby, how about extending it to the following Monday.

The Court: And the next Monday I will be here in Brunswick in Court.

Mr. Miller: I pledge you that I will try and get it signed Friday.

[fol. 248] The Court: He didn't cause that you all caused it. Shelby just said he caused it but he is ready to—it is up to you all.

Mr. Myrick: Well, he could have signed the order as written without any explanations, it would be tentatively,

if you had signed it the day that he wrote it of course, we wouldn't need to extend the date. I caused it in the sense that I objected to it. Judge I would like this to go in the record. Previously, I had agreed to extend the restraining order that this Court signed on February 24, 1953, until Monday, March 7 at 8:40 P. M.—5:00 P. M. as a result of not being able to sign this order today and as a result of Your Honor not being here Monday and as a result of the paper not being ready for your signature today I agree that the Judge and Mr. Miller will have until March 14.

The Court: Make that to March 15 because I am going to Rome next week. I just want to be sure. Until the 15th.

Mr. Myrick: Until the 15th of March, which is a Tuesday I believe. I will not Mr. Miller be able to agree to any further continuance after that time.

The Court: Now you understand the Court is not asking you to extend it to the 15th. I may be out of the jurisdiction of this Court at that time, there is a possibility. The only reason I said the 15th was I may be out of the jurisdiction of this Court on the 14th there is a possibility of it, not probable but possible. Make it the 15th. [fol. 249] My Court starts on the 14th and there is no reason why I shouldn't be here unless I have a break down of the automobile from here to Rome. But make it the 15th on Tuesday then.

Mr. Myrick: All right, sir.

The Court: You all sit down. Let her make a copy of that, and I will give you that.

Mr. Miller: I think we have got it all clear.

The Court: Let her give you that one dictation.

Hearing on the Motion ended.

PLAINTIFF'S EXHIBIT #1

IN THE SUPERIOR COURT OF CHATHAM COUNT, GEORGIA,
SEPTEMBER TERM, 1954

No. ——

CENTRAL OF GEORGIA RAILWAY COMPANY,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

DECLARATORY JUDGMENT, ETC.

Now comes the defendants in the above entitled cause, and generally demur to the petition of the plaintiff, and for grounds thereof say:

[fol. 250] 1. That the petition upon its face does not set out a cause of action.

2. That the matters and facts set forth in the petition fail to state a cause of action.

3. The petition shows upon its face that the award of Referee George Cheney, Esq. was not forever binding.

4. The petition fails to state a cause of action, as it shows on its face that the matters and facts raised therein come within the purview of Title 45, §156 United States Code Annotated.

5. The petition shows on its face that this Court has no jurisdiction of the questions raised, and that the matters involved are within the jurisdiction of the Railroad Labor Board exclusively.

Wayland K. Sullivan, Benning M. Grice, Attorneys for Defendants.

DEFENDANT'S EXHIBIT #1

May 25, 1951

Agreements for

1. Wage Increases.
2. Cost-of-living Basis for Wage Rate Adjustments.
3. Rules Changes applicable to Road Trainmen, Yardmen, Yardmaster, Stewards, etc. and for
[fol. 251] 4. 5-day work-week, and Interim 6-day work-week applicable to Yardmen and Yardmasters represented by Brotherhood of Railroad Trainmen.


| | Page |
|---|---|
| Interim agreement | 1 |
| Agreement "B" | 23 |
| Agreement "A" | 25 |
| Exhibits: A (Eastern railroads) | 50 |
| B (Western railroads) | 53 |
| C (Southeastern railroads) | 56 |
| Yardmasters—Interim agreement | 57 |
| Agreement "B" | 65 |
| Agreement "A" | 67 |
| Dining car stewards—agreement | 77 |
| Rules submitted to referee (Air hose; two classes road service) | 85 |
| Mediation agreement | 89 |
| Exception from moratorium: union shop requests | 93 |


Interim Agreement dated 5/25/52; Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

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[fol. 251-A] AGREEMENT "B"

The Agreement dated May 25, 1951, and identified as Agreement "A" is hereby deferred of application and an interim agreement, identified as "Interim Agreement," is substituted in lieu thereof.

The "Interim Agreement" will remain in effect until September 30, 1951 and thereafter be subject to the termi-

nation on not less than three (3) months' advance notice from the Brotherhood of Railroad Trainmen that they desire to place the five-day work week agreements in effect on a railway system or systems but the parties agree that the carriers are entitled to have six and seven day service performed at straight-time rates with reasonable regularity, and if it is claimed that the manpower situation is such that the adoption of the five-day work week agreement would not permit this, the question of whether there is sufficient manpower available to permit the adoption of the five-day work week shall be submitted for final decision to the nominee of the President of the United States.

Coincident with termination of such three (3) months' advance notice, but not earlier than January 1, 1952, and in conformity with the preceding paragraph, the "Interim Agreement" will be canceled and Agreement "A" will become fully effective.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

[fol. 251-B] For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Member, Wage-Rules Committee, C. E. Roberts, [fol. 251-C] Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

[fol. 251-D] AGREEMENT "A"

This Agreement made this 25th day of May, 1951, by and between the participating carriers listed in Exhibits A, B, and C, attached hereto and hereby made a part hereof and represented by Eastern, Western and Southeastern Carriers' Conference Committees, and the employees shown thereon and represented by the Brotherhood of Railroad Trainmen through their conference committee.

Witnesseth:

Whereas on or about March 15, 1949, certain proposals were served on the carriers parties hereto by the Brotherhood of Railroad Trainmen on behalf of conductors, trainmen, yard service employees and certain other groups of employees; and

Whereas on or about the same date certain proposals on behalf of the carriers parties hereto were served on the employees of said carriers represented by the Brotherhood of Railroad Trainmen; and

Whereas a hearing was conducted by a Presidential Emergency Board (No. 81) and said Board on June 15, 1950, filed its report, together with its findings and recommendations, with the President of the United States:

Now Therefore It Is Agreed:

Article 1—Wage Increases.

A. Effective July 1, 1950:

[fol. 251-E] Basic Daily Rates of Pay—Yard Service Employees.

The Daily Earnings Minima for yard service employees, effective pursuant to Item Fourth of the Agreement signed

at Chicago, Illinois, November 21, 1947, are hereby canceled and, in lieu thereof, the basic daily rates of yard service employees who have heretofore received such daily earnings minima shall be increased by 20 cents per day.

Basic daily rates for car retarder operators shall be determined by adding 80 cents to the basic daily rate of yard conductors (foremen).

Where agreements now provide for additional payment for yard conductors (foremen) acting as footboard yardmasters, such payment shall be not less than two-thirds of one hour's pay in excess of the yard conductors' (foremen's) daily rate.

United States Mail Handling Allowance.

The allowance included in the basic daily rates of passenger baggagemen handling United States Mail shall be as follows:

United States Mail Handling Allowance.

| | |
|---|---|
| Baggagemen (A) | 46 cents |
| Baggagemen (B) | 80 cents |
| Baggagemen (C) | $1.14 cents |

Notes:

(A) Baggagemen handling US mail of prescribed volume.

(B) Baggagemen handling dynamo and US mail of prescribed volume.

[fol. 251-F] Baggagemen handling express and US mail of prescribed volume.

(C) Baggagemen handling both dynamo and express and also handling US mail of prescribed volume.

Article 1B—

(a) Effective October 1, 1950, an increase of 18 cents per hour or $1.44 per day shall be added to the rates of employees in yard service and, in consideration of other provisions of this agreement, a further increase of 5 cents per hour or 40 cents per day shall be added to the rates of employees in yard service and an increase of 5 cents per hour or 40 cents per day shall be added to the rates of employees in road service.

(b) Effective January 1, 1951, an increase of 2 cents per

hour or 16 cents per day shall be added to the rates of employees in yard service and an increase of 5 cents per hour or 40 cents per day shall be added to the rates of employees in road service.

(c) Effective March 1, 1951, an increase of 2 cents per hour or 16 cents per day shall be added to the rates of employees in yard service and an increase of 2½ cents per hour or 20 cents per day shall be added to the rates of employees in road service.

(d) Upon the date this Agreement becomes effective as provided for in Agreement "B" an additional 4 cents per hour or 32 cents per day shall be added to the rates of employees in yard service.

(e) Where the rules of individual schedules or agreements require the payment of yard rates to employees other [fol. 251-G] than employees in yard service, the yard rates of pay established under the application of paragraphs (a), (b), (c) and (d) of this Article 1B shall apply.

(f) The interim increase of 12½ cents per hour for yardmen, and 5 cents per hour for employees in road service, effective October 1, 1950, as provided in General Order No. 2, issued February 8, 1951 by Assistant Secretary of the Army Karl R. Bendetsen, shall be credited against the increases provided for in this Article 1B.

(g) In application of increases provided for in paragraphs (a), (b), (c) and (d)—

1. All arbitraries, miscellaneous rates, or special allowances as provided in the schedules or wage agreements shall be increased under this agreement in proportion to the daily increase herein granted.

2. In determining new hourly rates, fractions of a cent will be disposed of by applying next higher quarter of a cent.

3. Mileage rates shall be determined by dividing the new daily rates by the miles constituting a basic day's work in the respective classes of service.

4. Daily earnings minima shall be increased by the amount of the respective daily increase.

5. Existing money differentials above existing standard daily rates shall be maintained.

6. Standard monthly rates and money monthly guaran-

tees in passenger service shall be thirty (30) times the new standard daily rate. Other than standard monthly rates and money monthly guarantees shall be so adjusted that [fol. 251-H] differentials existing as of September 30, 1950, shall be preserved.

7. Existing monthly rates and money monthly guarantees applicable in other than passenger service will be increased in the same proportion as the daily rate for the class of service involved is increased.

8. Where agreements now provide for additional payment for yard conductors (foremen) acting as footboard yardmasters, such payment shall be not less than two-thirds of one hour's pay in excess of the yard conductors' (foremen's) daily rate.

Article 2—Cost-of-Living Adjustment.

(a) A cost-of-living adjustment will be determined in accordance with changes in the "Consumers' Price Index for Moderate Income Families for Large Cities Combined" —"All Items" (1935-1939) (100) (Old Series)—as published by the Bureau of Labor Statistics, U. S. Department of Labor, and hereafter referred to as the BLS Consumers' Price Index. For the purpose of this computation an arbitrary base index of 178.0 is agreed to. The cost-of-living adjustment as hereinafter provided shall be made commencing April 1, 1951 and each three months thereafer based on the BLS Consumers' Price Index as of February 15, 1951 and the BLS Consumers' Price Index each third month thereafter as illustrated by the following table:

| BLS Consumers' Price Index as of: | Effective date of adjustment—first pay period on or after: |
|---|---|
| Feb. 15, 1951 | Apr. 1, 1951 |
| May 15, 1951 | July 1, 1951 |
| Aug. 15, 1951 | Oct. 1, 1951 |
| Nov. 15, 1951 | Jan. 1, 1952 |

[fol. 251-I]

| BLS Consumers' Price Index as of: | Effective date of adjustment—first pay period on or after: |
|---|---|
| Feb. 15, 1952 | Apr. 1, 1952 |
| May 15, 1952 | July 1, 1952 |
| Aug. 15, 1952 | Oct. 1, 1952 |
| Nov. 15, 1952 | Jan. 1, 1953 |
| Feb. 15, 1953 | Apr. 1, 1953 |
| May 15, 1953 | Oct. 1, 1953 |
| Aug. 15, 1953 | July 1, 1953 |

(b) The cost-of-living adjustment, when provided for, shall remain in effect to date of subsequent adjustment, as provided for in paragraph (a).

(c) Wage rates in effect March 1, 1951 plus the additional 4 cents per hour (32 cents per basic day) provided for in Article 1B (d) of this agreement will not be reduced during the life of this agreement. However, such rates are subject to a cost-of-living adjustment in accordance with the following table; adjustments to be made on the dates as illustrated in paragraph (a):

| BLS Consumers' Price Index | Cost-of-living allowance |
|---|---|
| 178.0 and less than 179.0 | None |
| 179.0 and less than 180.0 | 1 cent per hour (8 cents per basic day) |
| 180.0 and less than 181.0 | 2 cents per hour (16 cents per basic day) |
| 181.0 and less than 182.0 | 3 cents per hour (24 cents per basic day) |
| 182.0 and less than 183.0 | 4 cents per hour (32 cents per basic day) |

[fol. 251-J] and so forth, with corresponding 1 cent per hour (8 cents per basic day) adjustment for each 1 point change in the index. The initial allowance of 1 cent per hour (8 cents per basic day) made when the index reaches 179.0 will not be eliminated unless the index reaches 178.0 or less.

Examples:

If the BLS Consumers' Price Index as of February 15, 1951 should be 179.0 and less than 180.0, 1 cent per hour (8 cents per basic day) shall be added effective April 1, 1951 as a cost-of-living adjustment; if such index as of May 15, 1951 should be 178.0 or less, then effective July 1, 1951 the cost-of-living adjustment established under this example will be eliminated.

If the BLS Consumers' Price Index as of February 15, 1951 should be 180.0 and less than 181.0, 2 cents per hour (16 cents per basic day) shall be added effective April 1, 1951 as a cost-of-living adjustment; if such index as of May 15, 1951 should be 179.0 and less than 180.0, then effective July 1, 1951 the cost-of-living adjustment established under this example will be reduced by 1 cent per hour (8 cents per basic day).

The cost of living adjustment will be applied as a wage increase or a wage reduction in the same manner as the wage increase provided for in Article 1B hereof.

(d) In the event the Bureau of Labor Statistics does not issue the specified BLS Consumers' Price Index on or before the effective dates specified in paragraph (a), the cost-of-living adjustment will become effective on the first [fol. 251-K] day of the pay period during which the index is released.

(e) No adjustments, except as provided in paragraph (f), shall be made because of any revision which may later be made in the published figures of the BLS Consumers' Price Index for any base month.

(f) The parties to this agreement agree that the continuance of the cost-of-living adjustment is dependent upon the availability of the official monthly BLS Consumers' Price Index in its present form and calculated on the same basis as the Index for August 15, 1950, except that, if the Bureau of Labor Statistics, U. S. Department of Labor, should during the effective period of this agreement revise or change the methods or basic data used in calculating the BLS Consumers' Price Index in such a way as to affect the direct comparability of such revised or changed index with the index for August 15, 1950, then that Bureau shall

be requested to furnish a conversion factor designed to adjust to the new basis the base index of 178.0 described in paragraph (a) hereof, and the several indexes listed in paragraph (c) hereof.

(g) The parties agree that this Article 2 shall remain in effect until October 1, 1953 and thereafter subject to change under the provisions of the Railway Labor Act as amended.

Article 3—Five-Day Work Week.

Section 1.

(a) Beginning on the date this Agreement becomes effective on any carrier, such carrier will establish, for all [fol. 251-L] classes or crafts of yard service employees covered by this Article 3, subject to the exceptions contained therein, a work week of forty hours, consisting of five consecutive days of eight hours each, with two days off in each seven, except as hereinafter provided. The foregoing work week rule is subject to all other provisions of this Article 3.

(b) Due to the necessity of changing existing assignments to conform to the reduced work week provided for in Section 1, the Carriers will, prior to the effective date, post notices or bulletins as required by schedule, bulletin rules or practices in effect.

(1) Railroads or portions thereof on which yard assignments are bulletined:

Listing the days off of regular assignments and advertising regular relief assignments.

(2) On properties or portions thereof operating under the strict seniority or mark-up plan yard service employees shall select and be assigned "days off" periods as provided for below:

(a) Listing regular assignments according to service requirements.

(b) After all known assignments for yard service employees have been posted, all yard service employees will be required to make seven choices of their preferred "days off" period and the local chairman and local officers will cooperate in assigning the employees their "days off" period in accordance with their seniority. After "days off"

[fol. 251-M] have been assigned yard service employees will exercise seniority on the days of their work week in accordance with rules or practices in effect on individual properties or yards.

(c) After the "days off" periods have been assigned as referred to in Section 1(b) (2)(b) days off periods assigned to individual employees shall remain unchanged except when a vacancy occurs in a "days off" period, a new assignment is created, or when affected by a force reduction. Employees exercising seniority to other "days off" periods will be governed by the provisions of Section 11(b).

(d) Extra men will be handled in accordance with Section 6.

(3) The changes as enumerated above shall begin on the effective date of this Article 3, and employees may exercise seniority rights to select the assignment, or days off of their choice.

(4) After assignments as referred to in Section 1(b)(1) and Section 1(b)(2)(a) have been made changes thereafter shall be made in accordance with schedule, bulletin rules or practices in effect.

Section 2.

The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for extra or unassigned employees shall mean a period of seven consecutive days starting with Monday.

Section 3.

(a) When service is required by a carrier on days off of regular assignments it may be performed by other regular [fol. 251-N] assignments, by regular relief assignments, by a combination of regular and regular relief assignments, or by extra employees when not protected in the foregoing manner. (This does not disturb rules or practices on roads involving the use of emergency men or unassigned employees.) Where regular relief assignments are established, they shall, except as otherwise provided in this

agreement, have five consecutive days of work, designated days of service, and definite starting times on each shift within the time periods specified in the starting time rules. They may on different days, however, have different starting times within the periods specified in the starting time rules, and have different points for going on and off duty within the same seniority district which shall be the same as those of the employee or employees they are relieving, except that in a seniority district having more than one extra board, such relief assignments as are established will be manned from the territory allotted to a particular extra board.

(b) Where regular relief assignments cannot be established for five consecutive days on the same shift within the time periods specified in the starting time rules, as provided for in Section 3(a), such assignments may be established for five consecutive days with different starting times on different shifts on different days, within the time periods specified in the starting time rules, and on different days may have dfferent points for going on and off duty in the same seniority district which shall be the same as those of the employee or employees they are relieving, except that in a seniority district having more than one extra board, such relief assignments as are established will be manned from the territory allotted to a particular extra board.

[fol. 251-O] (c) After the starting times and days of service have been established, changes therein may be made only in accordance with schedule or bulletin rules.

(d) Rules providing for assignments of crews "for a fixed period of time which shall be for the same hours daily" will be relaxed only to the extent provided in (a) and (b) of this Section 3.

(e) Regular relief assignments for yard crews will be established for the crew as a unit, except in yards operating under strict seniority or mark-up rules. However, if an operational problem exists or arises which makes it impracticable to relieve regular or regular relief crews as a unit, or if either of the parties on a property desires, the designated days off need not be the same for individual members of a crew.

Representatives of the carrier and of the employees will cooperate in designating days off of individual members of a crew.

(Note: It is recognized in the application of the foregoing that the nature of the work on certain assignments will require that some member or members of the crew have knowledge of the work of the assignment and that this will be considered one of the operational problems.)

(f) Except as otherwise provided for in this Section 3, regular relief assignments shall be established in conformity with rules in agreements or practices in effect on individual properties governing starting time and bulletining of assignments, and when so established may be changed [fol. 251-P] thereafter only in accordance with schedule and bulletin rules.

Section 4.

At points where it is not practicable to grant two consecutive days off in a work week to regularly assigned or regular relief employees, agreements may be made on the individual properties to provide for the accumulation of days off over a period not to exceed five consecutive weeks.

If the carrier contends it is not practicable to grant two consecutive days off to a regularly assigned or regular relief employee and that it is necessary to establish non-consecutive days off, representatives of the carrier and representatives of the employees will confer and endeavor to agree upon accumulation of days off or the establishment of non-consecutive days off. If such representatives fail to agree, the carrier may nevertheless establish non-consecutive days off, subject to the right of the employees to process the dispute as a grievance or claim under the rules agreements, and in such proceedings the burden will be on the carrier to prove that it was not practicable to grant two consecutive days off.

Section 5.

On properties where men hold seniority in both road and yard service and work from common extra boards protecting both classes of service, such extra boards will be sepa-

rated except as otherwise provided in the Note following this Section 5. On these properties separate extra boards covering road and yard service respectively will be established and regulated in accordance with applicable rules [fol. 251-Q] on the individual properties consistent with service requirements. Employees on common extra boards which are separated will exercise their choice to work on either the road or yard board in accordance with their seniority rights.

Employees selecting yard extra boards will remain on same for at least seven calendar days, except when cut off by reduction in force, when required to protect their seniority as yardmasters, or when they bid in a regular assignment in yard service as hereinafter provided.

Regular or extra yard service employees bidding into road service, regular or extra, will not be permitted to work in road service other than as provided in the following paragraphs until the expiration of their work week in yard service. Employees on the yard extra board bidding in regular or regular relief assignments in yard service or employees on strict seniority or mark-up boards exercising seniority to different "days off" periods will be governed by the provisions of Section 11 of this Article 3.

Employees selecting yard service under this Section 5 will be considered as not available for road service during any work week except as provided herein. Where one of the boards becomes exhausted, employees on the other board may be used for work ordinarily falling to men off the exhausted extra board and will be considered as still attached to the board of their selection. Such employees will be compensated for each tour of service on the basis of payments as provided for by rules in effect on the various properties covering service performed from common extra boards.

[fol. 251-R] Rules relating to the exercise of seniority will be relaxed to the extent necessary to comply with this Section 5.

(Note: In instances where because of the limited amount of work involved separation of such boards is not practicable, the matter shall be negotiated between representatives of employees and representatives of management on

individual properties and reasonable arrangements entered into looking to the maintenance of common boards.)

Section 6.

Extra or unassigned employees may work any five days in a work week and their days off need not be consecutive.

Section 7.

(a) In event a regular or regular relief job or assignment is annulled for one day or more, the yard service employee or employees holding the job or assignment may exercise their seniority in accordance with rules in effect on the property.

(b) Any yard service employee or employees who because of their seniority standing, or for other reasons, are unable to place themselves on a regular job or assignment on the day or days their job or assignment is annulled, will revert to the extra board and be placed thereon, in addition to the men then on the extra board, in accordance with rules in effect on the property.

(c) In event a regular or regular relief job or assignment is annulled for one day or more and any or all of [fol. 251-S] the displaced yard service employees are unable to displace an employee or employees with lesser seniority on such day or days, thereby being deprived of working one or more of the five days of the job or assignment, such yard service employee or employees, if they so desire, shall be placed on the extra board in addition to the men then on the board so as to be available for work on the sixth and/or seventh day of the work week to provide them an opportunity to work five straight time shifts during the work week, provided: (1) that such yard service employees endeavored to exercise their seniority as provided in paragraphs (a) and (b) of this Section 7, (2) that such yard service employees are used from the extra board in accordance with rules in effect on the property and (3) that such service for the first eight hours on such sixth and/or seventh days will be paid for at straight time rates, until such employee or employees have worked five straight time shifts in that work week, any service in excess of eight hours on such days to be paid for under the overtime rules.

Section 8.

(1) Existing rules which relate to the payment of daily overtime for regular yardmen and practices thereunder are not changed hereby and shall be understood to apply to regular relief men, except that work performed by regular relief men on assignments which conform with the provisions of Section 3 shall be paid for at the straight time rate.

(2) Current overtime rules relating to extra yardmen are canceled as of the effective date of this agreement and the following will apply:

[fol. 251-T] Except as indicated below or when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off, or where exercising seniority rights, all time worked in excess of eight hours continuous service in a twenty-four hour period shall be paid for as overtime on a minute basis at one and one-half times the hourly rate.

In the application of this rule, the following shall govern:

(a) This rule applies only to service paid on an hourly or daily basis and not to service paid on mileage or road basis.

(b) A tour of duty in road service shall not be used to require payment of such overtime rate in yard service. (The term "road service," as used in this paragraph (b), shall not apply to employees paid road rates, but governed by yard rules.)

(c) Where an extra man commences work on a second shift in a twenty-four hour period he shall be paid at time and one-half for such second shift except when it is started twenty-two and one-half to twenty-four hours from the starting time of the first shift.

A twenty-four hour period, as referred to in this rule, shall be considered as commencing for the individual employee at the time he started to work on the last shift on which his basic day was paid for at the pro rata rate.

[fol. 251-U] (d) An extra man changing to a regular assignment or a regularly assigned man reverting to the extra list shall be paid at the pro rata rate for the first eight hours of work following such change.

(e) Except as modified by other provisions of this rule, an extra employee working one shift in one grade of service and a second shift in another grade of service shall be paid time and one-half for the second shift, the same as though both shifts were in the same grade of service, except where there is another man available to perform the work at pro rata rate.

Note (1): On railroads where a seniority board is in effect in cases where there is a man or men on such board available for work at the pro rata rate, a senior man who exercises his seniority to work two shifts, the second of which would otherwise, under the provisions of this rule, be paid at the overtime rate, shall be paid at the pro rata rate.

Note (2): The adoption of this rule shall not affect any existing rule in the schedule of any individual carrier relating to service performed on a succeeding trick when an employee's relief fails to report at the fixed starting time.

Note (3): On such roads as have an existing rule or practice differing from the rule of the December 12, 1947 Agreement, titled "Overtime Rate in Yard Service—Extra Men," and providing for pay at time and one-half, without exception, to extra yard men performing a second tour of duty in a 24-hour period, the Employees' Committee may elect to retain the existing rule or practice in lieu of this rule.

[fol. 251-V] (3) Employees worked more than five straight time eight-hour shifts in yard service in a work week shall be paid one and one-half times the basic straight time rate for such excess work except:

(a) Where days off are being accumulated under Section 4 of this Article 3;

(b) When changing off where it is the practice to work alternately days and nights for certain periods;

(c) When working through two shifts to change off;

(d) Where exercising seniority rights from one assignment to another;

(e) Where paid straight time rates under existing rules or practices for a second tour of duty in another grade or class of service.

In the event an additional day's pay at the straight time rate is paid to a yard service employee for other service performed or started during the course of his regular tour of duty, such additional day will not be utilized in computing the five straight time eight-hour shifts referred to in this paragraph (3).

(4) There shall be no overtime on overtime; neither shall overtime hours paid for, nor time paid for at straight time rate for work referred to in paragraph (3) of this Section 8, be utilized in computing the five straight time eight-hour shifts referred to in such paragraph (3) of this Section 8, nor shall time paid for in the nature of arbitraries or special allowances such as attending Court, inquests, investi- [fol. 251-W] gations, examinations, deadheading, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime. Existing rules or practices regarding the basis of payment of arbitraries or special allowances such as attending Court, inquests, investigations, examinations, deadheading, etc., also for calls, basic day, transfer time, stand-by time, and compensation therefor, preparatory time, starting time (except as otherwise provided in Section 3) and similar rules are not affected by the provisions of this Article 3.

(5) Any tour of duty in road service shall not be considered in any way in connection with the application of the provisions of this Article 3, nor shall service under two agreements be combined in any manner in the application of this Article 3.

Section 9.

Beginning on the date this Agreement becomes effective on any carrier, the Vacation Agreement dated April 29, 1949, effective July 1, 1949, shall be amended as to such carrier to provide the following insofar as yard service employees and employees having interchangeable yard and road rights covered by said agreement, who are represented by the Brotherhood of Railroad Trainmen, are concerned:

Section 1(a)—1(b). Add:

In the application of Section 1(a) and 1(b) each basic day in yard service performed by a yard service employee or by an employee having interchangeable yard and road rights shall be computed as 1.2 days for purposes of de- [fol. 251-X] termining qualifications for vacation.

Qualifying years accumulated, also qualifying requirements for years accumulated for extended vacations, prior to the calendar years in which Agreement "A" becomes effective, shall not be changed.

Section 1(d). Add "Note": The 60 and 30 calendar days referred to herein shall not be subject to the 1.2 computation provided for in Sections 1(a) and 1(b).

Section 2(a). Add:

Yard Service

An employee receiving one week's vacation, or pay in lieu thereof, under Section 1(a) shall be paid 1/52 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay be less than five (5) minimum basic day's pay at the rate of the last service rendered.

Combination of Yard and Road Service

An employee having interchangeable yard and road rights receiving one week's vaaction, or pay in lieu thereof, under Section 1(a) shall be paid 1/52 of the compensation earned by such employee, under schedule agreements held [fol. 251-Y] by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken; provided that, if the vacation is taken during the time such employee is working in road service such pay shall be not less than six (6) minimum basic days' pay

at the rate of the last road service rendered, and if the vacation is taken during the time such employee is working in yard service, such pay shall be not less than five (5) minimum basic days' pay at the rate of the last yard service rendered.

Section 2(b). Add:

Yard Service

An employee receiving two weeks' vacation, or pay in lieu thereof, under Section 1(b) shall be paid 1/26 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay be less than ten (10) minimum basic days' pay at the rate of the last yard service rendered.

Combination of Yard and Road Service

An employee having interchangeable yard and road rights receiving two weeks' vacation, or pay in lieu thereof, [fol. 251-Z] under Section 1(b) shall be paid 1/26 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken; provided that, if the vacation is taken during the time such employee is working in road service such pay shall be not less than twelve (12) minimum basic days' pay at the rate of the last road service rendered, and if the vacation is taken during the time such employee is working in yard service such pay shall be not less than ten (10) minimum basic days' pay at the rate of the last yard service rendered.

Section 9. Add:

With respect to yard service employees, and with respect to any yard service employee having interchangeable yard and road rights who receives a vacation in yard service, such additional vacation days shall be reduced by 1/6th.

General.

Except to the extent that the Vacation Agreement effective July 1, 1949, is changed by this Article 3, the said Vacation Agreement, as well as the Memorandum of Understanding of April 29, 1949, shall remain in full force and effect.

Section 10.

Existing weekly or monthly guarantees producing more than five days per week shall be modified to provide for a guarantee of five days per week. Nothing in this Article 3 [fol. 251-AA] shall be construed to create a guarantee where none now exists.

Section 11.

(a) All regular or regular relief assignments for yard service employees shall be for five (5) consecutive calendar days per week of not less than eight (8) consecutive hours per day, except as otherwise provided in this Article 3.

(b) An employee on a regular or regular relief assignment in yard service who takes another regular or regular relief assignment in yard service, or selects another "days off" period on a strict seniority or mark-up board in yard service, will be permitted to go on the assignment or "days off" period of his choice, and will take the conditions of that assignment or "days off" period, but will not be permitted to work more than five (5) straight time eight-hour shifts, as referred to in paragraph (d) of this Section, in the work week of the assignment or "days off--period which he had at the time he made his choice; provided, however, that if the foregoing would not permit such employee to work one or more days of the assignment of his choice, and if there is no extra man available who could be used to perform the work on those days, he may be used to work those days at the straight time rate.

(c) An employee on a yard extra board who takes a regu-

lar or regular relief assignment in yard service will be permitted to go on the assignment of his choice and will take the conditions of that assignment.

[fol. 251-BB] An employee on a regular or regular relief assignment who goes on an extra board will take the conditions attached to the extra board, but will not be permitted to work more than five straight time eight-hour shifts, as referred to in paragraph (d) of this Section, in the work week starting with the Monday in which the change is made.

(d) Except as provided in paragraphs (b) and (c) of this Section, employees, regular or extra, will not be permitted to work more than five straight time eight-hour shifts in yard service (excluding the exceptions from the computations provided for in Section 8, paragraphs (3) and (4) in a work week, unless the extra board has been exhausted and the exigencies of the service require the use of additional men, in which event senior available employees in the class in which the vacancy occurs shall be used in accordance with applicable rules or practices in effect on individual properties.

Section 12.

(a) Where reference is made in this Article 3 to the term "yard service" it shall be understood to have reference to service performed by employees governed by yard rules and yard conditions.

(b) Section 3(c) and Section 5 of this Article 3 shall not apply to:

Car Retarder Operators
Hump Motor Car Operators (Chauffeurs)
Levermen
Switchtenders (sometimes classified as Switchmen)

[fol. 251-CC] (c) None of the provisions of this Article 3 relating to starting time shall be applicable to any classification of employees included within the scope of this Article 3 which is not now subject to starting time rules.

Section 13.

Existing rules and practices, including those relating to the establishment of regular assignments, the establishment and regulation of extra boards, the operation of working lists or "mark-up-boards," etc., shall be changed or eliminated to conform to the provisions of this Article 3 in order to implement the operation of the reduced work week on a straight time basis.

Section 14.

The parties hereto having in mind conditions which exist or may arise on individual carriers in the application of the five-day work week agree that the duly authorized representative (General Chairman) of the employees, party to this agreement, and the officer designated by the carrier, may enter into additional written understandings to implement the purposes of this Article 3, provided that such understandings shall not be inconsistent with this Article 3.

Article 4—Initial Terminal Delay—Passenger Service.

(a) Initial terminal delay shall be paid on a minute basis to Conductors and Trainmen in passenger service for all time in excess of sixty (60) minutes computed from the time of reporting for duty up to the time the train leaves the terminal ("terminal" means passenger station or other starting point from which the train actually departs), at one-eighth (1/8th) of the basic daily rate, in addition to [fol. 251-DD] the full mileage, with the understanding that the actual time consumed in the performance of service in the initial terminal for which an arbitrary allowance of any kind is paid shall be deducted from the initial terminal time under this rule.

Where mileage is allowed between the point of reporting and the point of departure, each mile so allowed will extend by three (3) minutes the sixty (60) minute period after which initial terminal delay payment begins.

(b) When road overtime accrues during any trip or tour of duty, in no case will payment for both initial terminal delay and overtime be paid, but whichever is the greater will be paid.

(c) When a tour of duty is composed of a series of trips, initial terminal delay will be computed on only the first trip of the tour of duty.

(d) This rule shall become effective on August 1, 1951, except on such roads as the employee committees may elect to preserve existing rules and so notify the carrier on or before July 1, 1951.

Article 5—Initial Terminal Delay—Freight Service.

(a) Initial terminal delay shall be paid on a minute basis to Conductors and Trainmen in freight service for all time in excess of seventy-five (75) minutes computed from the time of reporting for duty up to the time the train leaves the terminal at one-eighth (1/8th) of the basic daily rate, in addition to the full mileage, with the understanding that the actual time consumed in the performance of service in [fol. 251-EE] the initial terminal for which an arbitrary allowance of any kind is paid shall be deducted from the initial terminal time under this rule.

Note: The phrase "train leaves the terminal" means when the train actually starts on its road trip from the yard track where the train is first made up.

This rule will not apply to pusher, helper, mine run, shifter, roustabout, belt line, transfer, work, wreck, construction, circus train (paid special rates or allowances), road switcher (district runs), or to local freight or mixed service where switching is performed at initial terminal in accordance with schedule rules.

Note: The question as to what service constitutes a "mine run" as that term is used above shall be determined on each individual railroad by management and the appropriate general committees.

Where mileage is allowed between the point of reporting for duty and the point of departure from the track on which the train is first made up, each mile so allowed will extend by 4.8 minutes the period of seventy-five (75) minutes after which initial terminal delay payment begins.

(b) When road overtime accrues during any trip or tour of duty, in no case will payment for both initial terminal delay and overtime be paid, but whichever is the greater will be paid.

(c) When a tour of duty is composed of a series of trips, initial terminal delay will be computed on only the first trip of the tour of duty.

[fol. 251-FF] (d) This rule shall become effective August 1, 1951, except on such roads as the employee committees may elect to preserve existing rules and so notify the carrier on or before July 1, 1951.

Article 6—Interdivisional Service, Etc.

(a) Where an individual carrier not now having the right to establish interdivisional, interseniority district, intra-divisional, or intraseniority district service, in freight or passenger service, considers it advisable to establish the same on any particular territory of the property, appropriate committee or committees of the Brotherhood of Railroad Trainmen representing the employees involved and proper representatives of the carrier will conduct negotiations relating thereto. In such negotiations, the carrier and the employees should definitely recognize each other's fundamental rights and, where necessary, reasonable and fair arrangements should be made in the interest of both parties.

(b) In the event the carrier and such committee or committees cannot agree on such matters, any party involved may invoke the services of the National Mediation Board.

(c) If mediation fails, the parties agree that such disputes shall be submitted to arbitration under the Railway Labor Act, as amended, but no dispute shall be submitted to arbitration until after the expiration of one (1) year from the date of this agreement.

The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional, inter-

[fol. 251-GG] seniority district, intradivisional, or intraseniority district service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional, interseniority district, intradivisional, or intraseniority district service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed

to have waived any right to renew the same request for a period of one (1) year following the date of said award, except by consent of employees party to said arbitration.

(d) This rule shall become effective August 1, 1951, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1951.

Article 7—Pooling of Cabooses.

(a) The employees affected by this rule and the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, being desirous of cooperating in situations where train service can be improved and trains expedited by the pooling of cabooses, adopt the following:

(b) Where an individual carrier not now having the right of pooling cabooses considers it advisable to establish such pooling, appropriate committee or committees representing the employees involved and proper representatives of the carrier will conduct negotiations relating thereto.

[fol. 251-HH] (c) A reasonable and practical approach to the problems herein referred to, namely—the pooling of cabooses—requires that the carriers and the employees definitely recognize each other's fundamental rights, and where necessary, reasonable and fair arrangements should be made in the interest of both parties.

It is further agreed that:

(1) Whenever the carrier desires so to pool its cabooses, it shall give notice to the General Chairman or General Chairmen of such intention, specifying the territory and service involved, whereupon the carrier and employee representatives shall, within 30 days, endeavor to agree upon any facilities that should be furnished to provide accommodations substantially equivalent to those formerly available on the cabooses and used by the employees and on appropriate arrangements for supplying and servicing such pooled cabooses.

(2) In the event the carrier and such representatives cannot so agree on the matter, any party involved may invoke the services of the National Mediation Board.

(3) If mediation fails, the parties agree that the dispute shall be submitted to arbitration under the Railway Labor Act, as amended. The decisions of the Arbitration Board shall be final and binding upon both parties, except that the award shall not require the carrier to pool cabooses but shall be accepted by the parties as the conditions which shall be met by the carrier if and when cabooses are pooled. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have [fol. 251-II] waived any right to renew the same request for a period of one year following the date of said award, except by consent of employees party to said arbitration.

(d) This rule shall become effective August 1, 1951, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1951.

Article 8—Coupling and Uncoupling Air, Signal and Steam Hose.

(Subject to separate agreement made May 25, 1951.)

Article 9—More Than One Class of Road Service.

(Subject to separate agreement made May 25, 1951.)

Article 10—Switching Limits.

(a) The employees involved, and the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, being desirous of cooperating in order to meet conditions on the various properties to the end that efficient and adequate switching service may be provided and industrial development facilitated, adopt the following:

(b) Except as provided in paragraph (c) hereof, where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, whereupon the carrier and the

[fol. 251-JJ] General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding.

In the event the carrier and the General Chairman or General Chairmen cannot so agree on the matter, any party involved may invoke the services of the National Mediation Board.

If mediation fails, the parties agree that the dispute shall be submitted to arbitration under the Railway Labor Act, as amended. The jurisdiction of the Arbitration Board shall be limited to the questions submitted to it. The award of the Board shall be final and binding upon the parties.

(c) Where, after the effective date of this agreement, an industry desires to locate outside of existing switching limits at points where yard crews are employed, the carrier may assure switching service at such location and may perform such service with yard crews from a yard or yards embraced within one and the same switching limits without additional compensation or penalties therefor to yard or road crews, provided the switch governing movement from the main track to the track or tracks serving such industry is located at a point not to exceed four miles from the then existing switching limits. Road crews may perform service at such industry only to the extent they could do so if such industry were within switching limits. Where rules require that yard limits and switching limits be the same, the yard limit board may be moved for operating purposes but switching limits shall remain unchanged unless and until change- in accordance with paragraph (b) hereof.

[fol. 251-KK] The yard conductor (foreman) or yard conductors (foremen) involved shall keep account of and report to the carrier daily on form provided the actual time consumed by the yard crew or crews outside of the switching limits in serving the industry in accordance with this paragraph (c) and a statement of such time shall be furnished the General Chairman or General Chairmen representing yard and road crews by the carrier each month. Unless some other plan for equalization of time is agreed to by the General Chairman or General Chairmen representing yard and road crews, the carrier

shall periodically offer to road employees the opportunity to work in yard service, under yard rules and conditions, on assignments as may be mutually agreed upon by the local representatives of the employees involved, for a period of time sufficient to offset the time so consumed by yard crews outside the switching limits. In the event such local representatives fail to agree, the carrier will designate such assignments but shall not be subject to penalty claims because of doing so. Such equalization of time shall be apportioned among employees holding seniority as road conductors or road brakemen in the same ratio as the accumulated hours of yard conductors (foremen) and yard brakemen (helpers).

(d) This agreement shall in no way affect the changing of yard or switching limits at points where no yard crews are employed.

(e) This rule shall become effective August 1, 1951 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employe representatives on or before July 1, 1951.

[fol. 251-LL] Article 11—Reporting for Duty.

In assigned road service where employes report for duty without being called, and it is desired on any day to defer the reporting time, advance notice shall be given not less than the usual advance calling time for reporting for duty at each terminal and in accordance with usual calling practices at such terminal. The employe shall be notified at such time when he is to report and only one such deferment may be made. In such cases the time of the trip or tour of duty shall begin at the time the employe is required in accordance with said notice of change to report for duty and does so report. If not so notified, the reporting time shall be as provided in the assignment.

Where employes are called, existing rules or practices are not changed or affected by this rule.

This rule shall become effective August 1, 1951 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employe representatives on or before July 1, 1951.

Article 12—Approval.

This agreement is subject to approval of the courts with respect to carriers in the hands of receivers or trustees.

This agreement is subject to such approval as may be necessary under the terms of the executive order by the President of the United States taking over the railroads and the laws of the United States pertaining to stabilization of prices, wages, etc.

[fol. 251-MM] Article 13—Moratorium.

No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950. Provided, however, that if government wage stabilization policy permits so-called annual improvement wage increases, the parties may meet with the President of the United States, or such other person as he may designate, on or after July 1, 1952, to discuss whether or not further wage adjustments for employes covered by this agreement are justified, in addition to increases received under the cost-of-living formula. At the request of either party for such a meeting, the President or his representative shall fix the time and place for such meeting. The President or his representative and the parties may secure information from the wage stabilization authorities or other government agencies. If the parties are unable to agree at such conferences whether or not further wage adjustments are justified they shall ask the President of the United States to appoint a referee who shall sit with them and consider all pertinent information, and decide promptly whether further wage increases are justified and, if so, what such increases should be, and the effective date thereof. The carrier representatives shall have one vote, the employe representatives shall have one vote and the referee shall have one vote.

The foregoing will not debar management and committees on individual railroads from mutually agreeing upon

[fol. 251-NN] changes in rates, rules and working conditions of employees covered by this agreement.

Article 14—Disputes Committee.

Any dispute arising between parties to this agreement in connection with the revision of individual agreements so as to make them conform to this agreement shall be referred jointly, or by either party, for decision to a committee, the carrier members of which shall be three members of the Carriers' Conference Committees, signatories hereto, or their successors, and the employee members of which shall be three representatives selected by the organization signatory hereto.

In the event the Committee is unable to reach a decision with respect to any such disputes, a neutral referee shall be selected by the members of the Committee, to sit with the Committee and act as a member thereof.

If a majority of the Committee is unable to agree upon the selection of a neutral referee, any three members of the Committee may request the National Mediation Board to appoint such neutral referee.

Decisions of a majority of all the members of the Committee shall be final and binding upon the parties to any dispute in which a decision may be rendered.

[fol. 251-OO] Article 15—

This agreement is in full and final settlement of the dispute growing out of notices served by the employees, parties hereto, and by the carriers, parties hereto, on or about March 15, 1949, in accordance with Section 6 of the Railway Labor Act, of intended changes in agreements affecting rates of pay, rules and working conditions.

Article 16—

This agreement shall be construed as a separate agreement by and on behalf of each carrier party hereto and those employees represented by the Brotherhood of Railroad Trainmen as heretofore stated; and shall remain in effect until September 30, 1953 and thereafter, subject to notices served in accordance with Section 6 of the Railway Labor Act, as amended.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

[fol. 251-PP] For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Comittee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Mem-
[fol. 251-QQ] ber, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

[fol. 251-RR] For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

[fol. 252] EXHIBIT A

Eastern Railroads

Eastern Railroads which have authorized representation by the Eastern Carriers' Conference Committee in the handling of notices filed on the individual carriers on or about March 15, 1949 by the Brotherhood of Railroad Trainmen for changes in schedule rules to provide for a 40-hour week, with time and one-half for Sundays and holidays for Yard Employees and changes in other rules and certain rates of pay; also, Carriers' notices served on the organizations on or about same date for certain rules changes.

(Authority is co-extensive with the notices filed and with scope of agreements as to classes of employees.)

[fol. 253]

| Railroads | Represented by the Brotherhood of Railroad Trainmen— Conductors | Trainmen | Switchmen | Dining Car Stewards | Yard-Masters | Miscellaneous Classes |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| Akron, Canton & Youngstown RR | x | x | x | | x | |
| Ann Arbor Railroad | (i) | x | x | | | |
| Baltimore & Ohio Railroad | | x | | x | | |
| B&O-Chicago Terminal RR Co | | | x | | | |
| Curtis Bay Railroad | | x | | | | |
| Staten Island Rapid Transit | | x | | | x | |
| Bessemer & Lake Erie RR Co | (i) | x | (a) | | | |
| Boston & Maine Railroad | x | x | x | | | (b) |
| Boston Terminal Company | | | x | | | |
| Brooklyn Eastern District Term | x | x | | | x | |
| Canadian Natl. Lines in N.E | | x | x | | | |
| United States & Canada RR | | x | x | | | |
| Champlain & St. Lawrence RR | | x | x | | | |
| St. Clair Tunnel Company | | x | x | | | |
| Can. Natl. Rys. State of N.Y | | x | x | | | |
| Canadian Pacific Ry. Co | x | x | x | | | |
| Central RR Co. of New Jersey(T) | | x | x | | | |

[fol. 254]

| | | | | | | |
|---|---|---|---|---|---|---|
| Central RR Co. of Penna | | x | x | | | (b) |
| Central Vermont Railway | | x | x | | x | |
| Chesapeake & Ohio Railway— | | | | | | |
| Pere Marquette District | | x | x | | | |
| Fort St, Union Depot Co | | | x | | | |
| Chicago, Ind. & L'ville Ry. Co | | x | x | x | x | |
| Chicago Union Station Company | | (h) | | | | |
| Cincinnati Union Terminal Co | | | x | | x | |
| Delaware & Hudson Railroad | | x | | x | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Delaware, Lackawanna & Western RR | x | x | | x | | |
| Detroit Terminal Railroad Co. | x | x | x | | | |
| Detroit, Toledo & Ironton RR Co. | x | x | | | | |
| Erie Railroad Company | x | x | x | | x | (b) |
| Grand Trunk Western Ry. Co. | | x | x | x | x | |
| Jay Street Connecting RR | x | x | | | x | |
| Lake Terminal Railroad Co. | x | x | | | x | |
| Lehigh & New England RR Co. | | x | | | x | |
| [fol. 255] | | | | | | |
| Lehigh Valley Railroad Co. | | x | x | x | | (b) (c) |
| Maine Central Railroad Co. | x | x | x | | x | |
| Portland Terminal Co. | | x | x | | x | |
| Monongahela Railway Co. | | x | | | | |
| Montour Railroad Co. | x | x | | | | |
| New York Central System— | | | | x | | |
| Full Line Agreements | | x | x | | | |
| NYC—Buffalo & East | | x | x | | | |
| NYC—West of Buffalo | | x | x | | x | (b) |
| Ohio Central Division | x | x | x | | | |
| Federal Valley | | x | x | | | |
| Michigan Central Railroad | x | x | x | | | |
| Canada Division | | x | x | | | (b) (e) |
| C.C.C. & St. L. Railway | | x | x | | | |
| Peoria & Eastern Railway | | x | x | | | |
| L. & J. B. & Railroad | | x | x | | | |
| Boston & Albany Railroad | | x | x | | | (b) (f) |
| Indiana Harbor Belt RR | x | x | x | | | |
| Chicago River & Indiana RR | x | x | x | | | |
| Chicago Junction Ry. | x | x | x | | | |
| Pittsburgh & Lake Erie RR Co. | | x | x | | | |
| Lake Erie & Eastern RR Co. | x | x | x | | | |

[fol. 256]

| Railroads | Represented by the Brotherhood of Railroad Trainmen— Conductors | Trainmen | Switchmen | Dining Car Stewards | Yard-Masters | Miscellaneous Classes |
|---|---|---|---|---|---|---|
| (1) | (2) | (3) | (4) | (5) | (6) | (7) |
| Cleveland Union Terminals | | | x | | | |
| New York, Chicago & St. Louis RR | | x | x | | | |
| New York, New Haven & Hartford RR | x | x | x | x | | (b) |
| New York, Ontario & Western Ry | | x | | | x | |
| Pennsylvania Railroad | x | x | x | x | | (b) (g) |
| Baltimore & Eastern RR Co | | x | x | | | |
| Pennsylvania-Reading SS Lines | x | x | x | | x | |
| Pittsburgh & West Virginia Ry | x | x | | | | |
| Pitts. Chartiers & Youghiogheny Ry | x | x | | | | |
| Reading Company | | x | x | x | x | (d) |
| River Terminal Railway Co | x | x | | | | |
| Union Depot Co.—Columbus, O | | | x | | | |
| Union Freight Railroad Co | x | x | x | | | |
| Washington Terminal Company | | | x | | | |
| Wheeling & Lake Erie Ry. Co | | x | x | | | |
| Lorain & West Virginia Ry. Co | | x | x | | | |

[fol. 257] Footnotes:

(a)—Bessemer & Lake Erie—Brotherhood of Railroad Trainmen represents switchmen in all yards except Conneaut Yard.

(b)—Boston & Maine, C RR of Pa., Erie, Lehigh Valley, NYC System, Ohio Central Division, C.C.C. & St. L. Indiana Harbor Belt, New York, New Haven & Hartford, Pennsylvania—Car Retarder Operator represented by the Brotherhood of Railroad Trainmen.

(c) Lehigh Valley—Car Riders represented by the Brotherhood of Railroad Trainmen.

(d) Reading Company—Car Droppers at Port Reading and Chauffeurs represented by the Brotherhood of Railroad Trainmen.

(e) C.C.C. & St. L.—Motor Car Operators represented by the Brotherhood of Railroad Trainmen.

(f) Indiana Harbor Belt—Levermen represented by the Brotherhood of Railroad Trainmen.

(g) Pennsylvania—Hump Motor Car Operators represented by the Brotherhood of Railroad Trainmen.

(h) Chicago Union Station—Switchtenders only.

(i) Ann Arbor, Bessemer & Lake Erie—Representation of road conductors obtained by Brotherhood of Railroad Trainment subsequent to filing of the March 15, 1949 notices. Carrier authorized representation by Eastern Carriers' Conference Committee under date of May 23, 1951.

[fol. 258] (T) Trusteeship.

For the Carrier:

H. E. Jones.

For the Employees:

C. W. Stanley, The Brotherhood of Railroad Trainmen.

Washington, D. C. May 23, 1951.

## Exhibit B

### Western Railroads

List of carriers as represented by the western carriers' conference committee—1949, and their employees represented by the Brotherhood of Railroad Trainmen, in connection with notices dated on or about March 15, 1949 served upon certain western railroads requesting a 40-hour week with time and one-half rates for Sundays and Holidays for all classes or crafts of yard service employees including affiliated classes or crafts; the establishment of graduated rate of pay tables in all classes of service; the restoration of standard wage rates between the territories; and mod-fication of certain rules as set forth therein, including rules covering dining car stewards; and in connection with notices served on or about the same date by individual western railroads upon their employees represented by the Brotherhood of Railroad Trainmen, of desire and intent to change existing rules, regulations, interpretations or practices, however established, to the extent and as shown in said notices.

[fol. 259] (Authorization is coextensive with the provisions of current schedule agreements applicable to the employees represented by the Brotherhood of Railroad Trainmen.)

Alton and Southern Railroad.

1: Atchison, Topeka & Santa Fe Railway, The
1: Gulf, Colorado & Santa Fe Railway
1: Panhandle & Santa Fe Railway
2: Belt Railway Company of Chicago, The Burlington-Rock Island Railroad
3: Camas Prairie Railroad
1-4: Chicago & Eastern Illinois Railroad
4: Chicago & Illinois Midland Railway
5-6: Chicago & North Western Railway
2-4: Chicago & Western Indiana Railroad
1-7: Chicago, Burlington & Quincy Railroad, Chicago Great Western Railway
1: Chicago, Milwaukee, St. Paul & Pacific Railroad
1: Chicago, Terre Haute & Southeastern Railway

1: Chicago, Rock Island & Pacific Railroad
1: Chicago, St. Paul, Minneapolis & Omaha Railway
1-4-8: Colorado & Southern Railway
2-4: Colorado & Wyoming Railway
1: Denver & Rio Grande Western Railroad, Des Moines Union Railway
2: Duluth, Missabe & Iron Range Railway (Iron Range Division)
2: Duluth, Missabe & Iron Range Railway (Missabe Division) Duluth Union Depot & Transfer Co.
4: East St. Louis Junction Railroad
2: Elgin, Joliet & Eastern Railway
1: Fort Worth & Denver City Railway

Wichita Valley Railway

2: Galveston, Houston & Henderson Railroad
[fol. 260] 1: Great Northern Railway
Green Bay & Western Railroad
Kewaunee, Green Bay & Western Railroad
Gulf Coast Lines—Comprising

1: T—Asherton & Gulf Railway
1-4: T—Asphalt Belt Railway
1: T—Beaumont, Sour Lake & Western Railway
1: T—Houston & Brazos Valley Railway
1: T—Houston North Shore Railway
9: T—Iberia, St. Mary & Eastern Railroad
1-2: T—International-Great Northern Railroad
9: T—New Iberia & Northern Railroad
1: T—New Orleans, Texas & Mexico Railway
1: T—Orange & Northwestern Railroad, The
9: T—Rio Grande City Railway
10: T—St. Louis, Brownsville & Mexico Railway
1: T—San Antonio Southern Railway
1-2: T—San Antonio, Uvalde & Gulf Railroad
9: T—San Benito & Rio Grande Valley Railway
1: T—Sugar Land Railway
2: Houston Belt & Terminal Railway
1: Illinois Central Railroad

Chicago & Illinois Western Railroad
Kansas City Southern Railway, The

Kansas City Terminal Railway
King Street Passenger Station

2: Los Angeles Junction Railway
2-11: Louisiana & Arkansas Railway
Manufacturers Railway
2: Midland Valley Railroad

Kansas, Oklahoma & Gulf Railway
Minneapolis & St. Louis Railway, The
Minneapolis, St. Paul & Sault Ste. Marie Railroad

4: Duluth, South Shore & Atlantic Railway

Minnesota Transfer Railway

[fol. 261] 1-2: Missouri-Kansas-Texas Railroad
1-2: Missouri-Kansas-Texas Railroad Company of Texas
1: T—Missouri Pacific Railroad
1: Northern Pacific Railway

Northwestern Pacific Railroad
Ogden Union Railway & Depot Company, The

12: Peoria & Pekin Union Railway
Port Terminal Railroad Association
13: St. Joseph Terminal Railroad
1: St. Louis-San Francisco Railway
1: St. Louis, San Francisco & Texas Railway
2-4: St. Louis Southwestern Railway
2-4: St. Louis Southwestern Railway Company of Texas
1: San Diego & Arizona Eastern Railway
1-14-15: Southern Pacific Co. (Pacific Lines)—Excluding Former

El Paso & Southwestern System
Southern Pacific Company—Former El Paso & Southwestern System
1: Spokane, Portland & Seattle Railway
1: Oregon Electric Railway
1: Oregon Trunk Railway
Terminal Railroad Association of St. Louis
1-2-4-16: Texas & New Orleans Railroad
1-2: Texas & Pacific Railway
Abilene & Southern Railway

Fort Worth Belt Railway
Texas-New Mexico Railway
Weatherford, Mineral Wells & Northwestern Railway, The
Texas Mexican Railway, The
2: Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans
[fol. 262] 2-4: Toledo, Peoria & Western Railroad
1: Union Pacific Railroad
2: Union Railway Company (Memphis)
2: Union Terminal Company (Dallas)
1-17: Wabash Railroad—Lines West of Detroit
18: Wabash Railroad—Lines East of Detroit (Buffalo Division)
1: Western Pacific Railroad, The

Notes:

1—Authorization includes Dining Car Stewards.
1—Authorization includes Yardmasters.
3—Authorization includes only such employes covered by Northern Pacific trainmen's and yardmen's schedule.
4—Authorization includes conductors.
5—Authorization excludes yard foremen, Chicago Switching District.
6—Authorization includes footboard yardmasters, except Chicago Switching District, and car retarder operators.
7—Authorization includes tap room stewards.
8—Authorization includes yardmasters and assistant yardmasters at Denver, Colorado.
9—Authorization includes dining car stewards only.
10—Authorization covers engine foremen only and dining car stewards.
[fol. 263] 11—Authorization covers flagmen and yardmen (covered by agreement dated December 1, 1931.)
12—Authorization includes general yardmasters, assistant general yardmasters and yardmasters.
13—Authorization includes footboard yardmasters.
14—Authorization includes cafe car stewards.
15—Agreement covering dining car stewards includes Former El Paso & Southwestern System.

16—Authorization includes bus drivers (New Orleans) but authorization limited to 40-hour week only.

17—Authorization includes yardmen (Chicago Switching District).

18—Authorization covers road conductors and road brakemen only.

May 23, 1951.

For the Carriers:

(Illegible).

For the Organization:

C. W. Stanley, Brotherhood of Railroad Trainmen.

[fol. 264] EXHIBIT C

Southeastern Railroads

Which Have Authorized Their Representation By Southeastern Carriers' Conference Committee—1949 for the purpose of handling the proposals for changes in existing agreements covering trainmen, and certain other classes, as represented by the Brotherhood of Railroad Trainmen as set forth in a certain statement titled "Proposition March 15, 1949" which was served on such railroads on behalf of such employee groups under "Letter of Notice" dated March 15, 1949 and the proposals for revision and/or elimination of certain rules and practices, and for certain additional rules submitted by such respective railroads to such employee groups under formal notice filed on or between March 18 and 24, 1949.

Such authority being limited and relating only to those employee groups the rates of pay and working conditions of which are governed by existing schedule agreements, under which such employee groups are represented by the above named organization, and on behalf of which and to which groups such proposals were submitted.

Atlantic Coast Line
Atlanta & West Point, Western Railway of Alabama
Atlanta Joint Terminals
Central of Georgia
Charleston & Western Carolina

Chesapeake & Ohio-Chesapeake Dist. (a)
Clinchfield
Florida East Co-st (b)
[fol. 265] Georgia
Gulf, Mobile & Ohio
Jacksonville Terminal
Kentucky & Indiana Terminal
Louisville & Nashville
Nashville, Chattanooga & St. Louis
Norfolk & Portsmouth Belt Line
Norfolk & Western
Richmond, Fredericksburg & Potomac, Potomac Yard
Seaboard Air Line
Southern (c)
Alabama Great Southern (d)
Cin. Burnside & Cumberland River
Cin. New Orleans & Texas Pacific
Georgia Southern & Florida
Harriman & Northeastern
New Orleans & Northeastern
New Orleans Terminal
St. Johns River Terminal
Tennessee Central
Virginian

(a) Includes Hocking Division.
(b) In trusteeship. Any commitment on its behalf is subject to Court approval.
(c) Includes State University Railroad.
(d) Includes Woodstock & Blocton Railway.

(Illegible), For the Railroads, C. W. Stanley, For B. of R.T.

May 22, 1951.

[fol. 266] YARDMASTERS—INTERIM AGREEMENT, DATED 5/21/51, WITH AGREEMENTS "A" AND "B" ATTACHED:

DINING CAR STEWARDS—Agreement dated 5/21/51;

Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

BRT Referee

Agreement

This Agreement made this 25th day of May, 1951, by and between the participating carriers listed in Exhibits A, B, and C, made a part hereof, and represented by the Eastern, Western and Southeastern Carriers' Conference Committees, and the employees shown thereon and represented by the Brotherhood of Railroad Trainmen through their conference committee.

Witnesseth:

This Agreement is supplemental to an agreement entered into this same date by the carriers and employees parties hereto with respect to wages and rules of road and yard service employees.

Article 1

The parties are in dispute with respect to the following:

[fol. 267] (1) Coupling and Uncoupling Air, Signal and Steam Hose.

The parties are agreed that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for decision.

(2) More Than One Class of Road Service.

The parties are agreed that the dispute as to the wording of this rule shall be submitted to a referee to be appointed by the President of the United States for decision.

Article 2

The proceedings before the referee shall be commenced in Washington, D. C., on June 25, 1951.

Article 3

The decision of the referee shall be final and binding on the parties, and shall become effective thirty (30) days from the expiration of the date the referee notifies the carrier and employee committees of his decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman.

[fol. 268] For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen.

For the Participating Carriers Listed in Exhibit A:

Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Com-[fol. 269] mit*Tee*, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Member, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-

Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

[fol. 270] Case No. A-3437

Mediation Agreement

Brotherhood of Railroad Trainmen

and

Eastern Carriers' Conference Committee

Western Carriers' Conference Committee

Southeastern Carriers' Conference Committee

In settlement of differences as set forth in Docket Case No. A-3437 of the National Mediation Board and under the provisions of the Railway Labor Act, amended, and pursuant to a Memorandum of Agreement signed at the White House on December 21, 1950, it is mutually agreed that the questions in dispute are hereby disposed of by the execution of agreements as of this date, copies of which are attached hereto but not made a part hereof.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

[fol. 271] For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, [fol. 272] Member, Wage-Rules Committee, L. E. Cesther, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Member, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

Witnessed:

John Thad Scott, Jr., Chairman, National Mediation Board.

Francis A. O'Neil, Jr., Member, National Mediation Board.

Lincoln Edwards, Member, National Mediation Board.

[fol. 273] NOTE RE EXHIBIT

Exception from moratorium union shop requests; Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

DEFENDANT'S EXHIBIT #2

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

CENTRAL OF GEORGIA RAILWAY COMPANY,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

SUIT FOR DECLARATORY JUDGMENT AND INJUNCTION

OPINION AND JUDGMENT ON GENERAL DEMURRERS

STATEMENT OF THE CASE

Central of Georgia Railway Company sued The Brotherhood of Railroad Trainmen, Local Lodge No. 721 of The Brotherhood, Z. P. Logan, President, W. A. Nealey, Secretary thereof, L. E. Chester of Florida, Individually and Deputy President, and others, and alleged The Brotherhood, an unincorporated association of Cleveland, Ohio, is the accredited bargaining agent of the "Brotherhood";

That there are about four hundred and fifty (450) trainmen and yardmen employed by the Railroad Company who reside in Georgia, Alabama and Tennessee who are members, and defendants named in the petition are representa- [fol. 274] tives of the class consisting of all the trainmen and all the yardmen employed by the Railroad Company who are members of the "Brotherhood."

That in 1950, the Class I railroads of the United States including Central of Georgia Railway Company, and the operating Brotherhoods, including those mentioned in the petition, bargained for months on certain matters but failed to agree. The Federal Mediation Board was called in under the Railroad Labor Act, but failed to get the disputants into accord. Then the President of the United States appointed an Emergency Board under authority of the Railway Labor Act, which made its findings.

The Brotherhoods declined to accept these findings, and asked the President to take control of the railroads.

On December 21, 1950 the disputants agreed upon a memorandum in which they set forth certain questions on which they would continue to bargain.

On May 25, 1951, they agreed upon wages, and rules applicable to road trainmen, yardmen, yardmasters, stewards, etc., and for a five-day work week, but did not agree upon the question of "more than one class of road service" and "air hose coupling and uncoupling." As to these subjects, on the same day they agreed (plaintiffs' Exhibit "A") that the questions still in contest should be referred to a Referee to be appointed by the President of the United States, and they agreed that "the decision of the Referee shall be final and binding on the parties, and shall become effective thirty (30) days from the expiration . . . of notice [fol. 275] to the carrier and the employees' committees . . . of the decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules" . . .

The President appointed as Referee George Cheney, Esquire, who held hearings, and on August 1, 1951, released his award, which is in the Record by Amendment as Plaintiffs' Exhibit "D".

The statement of facts and findings of the Referee on the questions at issue appear on pages 27 to 30 in the Referee's findings (Exhibit "D").

The case was argued and submitted on General Demurrer, to the Petition as amended.

There were two main questions involved, viz: (1) Jurisdiction of Subject Matter, and (2) Questions on the Merits of the case.

## Questions to be Determined

The General Demurrer contains six (6) grounds: The fourth and fifth grounds deal with the question of jurisdiction of this Court over the subject matter. No question of territorial jurisdiction, i.e., venue, is involved.

## Opinion of the Court

### Jurisdiction

Counsel for the contending parties have dealt with the jurisdictional feature out of sequence, we will follow their [fol. 276] order and will consider first the jurisdictional question as stated in the fourth and fifth grounds of General Demurrer.

The questions here raised are not novel but have several times been considered by eminent authority.

The Georgia decisions according to Plaintiffs hold that in suits involving the interpretation or application of agreements between a carrier and its employees, the Georgia Courts have jurisdiction.

Evans vs. L & N RR Co. 191 Ga., 395.

Central of Ga. v. Culpepper, 209 Ga. 844.

Defendants' attorneys cite to us respectable authority to the contrary that this jurisdiction is exclusively in the United States Courts.

Steele v. L & N RR Co., 323 U.S. 192.

Green v. Obergfell, 121 F. 2d, 138.

Order of Ry. Conductors v. Sou. Railroad 70 U.S. S. Ct. 585.

Slocum v. Delaware Ry. Co., 70 S. Ct., 577.

The opinions of both Courts are impressive.

However, trial Courts of this State are bound to follow the State Supreme Court, until reversed or set aside, and the Georgia Supreme Court having spoken last on the subject, we must hold with the plaintiffs upon the question of jurisdiction.

[fol. 277] The Merits of the Case

It appears that a proper interpretation of the finding of Referee Cheney will control this case.

The agreement under which the reference to Mr. Cheney was had, provided (Article 3, of Exhibit B), that the decision of the Referee shall become effective 30 days from the date of the Referee's findings, and each carrier shall make its election within that period in accordance with the saving clause provision of the proposed rules.

For Rule see award of Referee Cheney (Page 30 of Plaintiffs' Exhibit "D"), viz:

"A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no

prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements, interpretations or practices shall be changed to provide for the payment of only 95 cents."

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September [fol. 278] 1, 1951, and if accepted the date of such notification shall become the effective date."

The entire finding of the Referee appears in Exhibit "D".

On September 1, 1951, the Assistant to the Vice-President and General Manager of the Central of Georgia Railway, notified the General Chairman of the "Brotherhood" that his company rejected the proposed new rule with respect to yardmen coupling and uncoupling air, steam and signal hose in this language.

"In accordance with this decision and award, you are hereby advised that the Central of Georgia Railway Company desires to and will retain its practices without modification with respect to Item (1) above."

Compare Exhibit Art 3 of Exhibit A. Letter from Central of Georgia Railway Company, Exhibit B. Last page of award of Referee Cheney, Exhibit D and Paragraph 12 of the petition.

In our opinion, the letter from the Central of Georgia Railway Company of September 1, 1951 (quoted above) takes out of the award of Referee Cheney, all findings with respect to the coupling and uncoupling of air, steam and signal hose on the Central of Georgia Railway, and throws that subject back on its status occupied before the award.

It would be manifestly unfair to permit the Railroad to reject the award, as it affected these defendants, and then claim that a prior custom on this subject has become a [fol. 279] part of the contract by reason of the Cheney award.

The question at issue was unsettled before the award, and by reason of the Railroad's letter of September 1st, 1951 is still unsettled, in our opinion.

Final and Binding

The Court does not wish to leave an impression that it has approved the entire contract as written by Referee Cheney.

Petitioner argues that the finding of the Referee is "forever binding", or is "to run indefinitely", and the rules established, as construed by plaintiff are to continue forever.

It has long been a rule in Georgia, and I believe, in most states, that employment contracts are to be limited as to time of duration and territory.

In Bentley v. Smith et al., 3 Ga. App. 242, Justice Russell in writing the opinion stated:

"4. A contract for permanent employment continues indefinitely, and is terminable by either of the parties at any time."

To the same effect is Green v. Obergfell, 121 Fed 2d 46, 138 A.L.R. 253, see page 284; and notes.

In Stelling v. Richmond County, 81 Ga. App. 571, on page 576, the Court citing the above case stated:

[fol. 280] "He alleges that he was a 'permanent employee'. This is perfectly consistent with his indefinite status for, in the absence of specific contract or legislative enactment, 'permanent' employment is indefinite, and may be terminated by either party at any time."

It is worthy of note that in Title 45, Section 158 (j) dealing with agreements to arbitrate and what such agreements shall contain, the following is provided:

"shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force." (underscoring added.)

We cannot follow plaintiff's claim that Mr. Cheney's award is "final and binding and not subject to change, modifications or negotiation at the demand of any party"

(underscoring added), as claimed by plaintiff on page 12 of its Petition.

The posi-ion of petitioner does not appeal to this Court of equity, where a perpetual injunction is invoked that would hinder and impede occupational improvement, as well as being without law or sufficient facts to sustain it.

### Judgment

The Court thereupon overrules the fourth and fifth grounds of General Demurrer, sustains the first, second, third and sixth grounds of General Demurrer and dismisses the case.

[fol. 281] The Temporary Restraining Order granted May 26, 1954, is hereby set aside and revoked.

And It Is So Ordered.

This July 29, 1954.

(S.) David S. Atkinson, Judge, Superior Court, E.J.C. of Georgia.

### In United States District Court

### Findings, Conclusions and Judgment on Plaintiff's Motion for Preliminary Injunction

This case having come on for hearing on Plaintiff's motion for preliminary injunction before the United States District Judge for the Southern District of Georgia in the Post Office Building at Brunswick, Georgia, on February 28th, 1955 at 11:00 o'clock A. M. and the Court having heard and considered the Plaintiff's verified petition, and evidence of all parties, and having examined all exhibits, and having heard argument by Counsel for all parties;

The Court reached the following findings of fact and conclusions of law, and enters thereon the following judgment.

### Findings of Fact

1

The Central of Georgia Railway Company, the Plaintiff in this action, is a corporation chartered under the laws of [fol. 282] Georgia, with its principal office and place of

business in Chatham County, Georgia. It is a common carrier of freight and passengers, both in intrastate and interstate commerce.

The Defendants in this action are the following:

(a) The Brotherhood of Railroad Trainmen, an unincorporated labor union, with its principal office and place of business in Cleveland, Ohio, doing business in Chatham County, Georgia and represented there by the Officers of Local Lodge No. 721, Brotherhood of Railroad Trainmen:

(b) Local Lodge No. 721 which is an unincorporated Local Lodge of the Brotherhood of Railroad Trainmen which has its principal office and place of business in Chatham County, Georgia.

(c) Z. P. Logan who is President of said Local Lodge No. 721 is a resident of Chatham County, Georgia an employee of the Central of Georgia Railway Company, and a member of Defendant Class described in sub-paragraph 2 (g) below;

(d) W. A. Nealey who is Secretary of Local Lodge No. 721, a resident of Chatham County, Georgia, an employee of the Central of Georgia Railway Company, and a member of Defendant Class described in sub-paragraph 2 (g) below;

(e) L. E. Chester, individually, and as Vice-President of the Brotherhood of Railroad Trainmen, who is a resident of Florida;

(f) B. G. Byington, W. B. English and J. W. Shirley residents of Bibb County, Georgia and J. G. Pardue, a [fol. 283] resident of Chatham County, Georgia, who are named Defendants individually, and, respectively, as General Chairman, Vice Chairman, Secretary and member of the Grievance Committee of the Brotherhood of Railroad Trainmen on the Central of Georgia Railway Company, and are members of Defendant Class described in sub-paragraph 2 (g) below:

(g) There are also named as defendants the Class of employees of the Central of Georgia Railway Company numbering approximately 450 men known as trainmen and yardmen who are represented by said Brotherhood of Railroad Trainmen and said Local Lodge No. 721 Brotherhood

of Railroad Trainmen. All of the aforesaid Defendants are named as representatives of this Craft of employees.

3

The Defendant Craft of employees on the Central of Georgia Railway Company, known as Trainmen and yardmen, are represented by the Brotherhood of Railroad Trainmen as the sole and exclusive bargaining representative under the Railway Labor Act. All of the said Class are severally interested in the matter presented to this Court in this cause for adjudication, and there is presented a common question of law and fact affecting their several rights, and common relief is sought against each member of the class. Said class is adequately represented by the individual named Defendants, and the selection of the individual named Defendants will fairly insure the adequate representation of that class.

[fol. 284] 4

The Defendants were properly served with complaint, summons, motions and orders, had proper notice of this hearing; and are properly before this Court.

5

The Central of Georgia Railway Company, Plaintiff, presented to this Court on Thursday evening February 24, 1955, a motion for a temporary restraining order and preliminary injunction seeking to restrain the Defendant from endeavoring to negotiate a cancellation, modification, change or revision of a certain arbitration award called the Cheney award, dated August 1, 1951, and from endeavoring to negotiate or from demanding a contract provision, referred to in railroad parlance as "a rule" with the Central of Georgia Railway Company prescribing extra compensation to Defendant Class of employees for coupling or uncoupling air, steam or signal hose; and further from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central of Georgia Railway Company because of any feature

of the controversy concerning the Cheney award which has been referred to and was before the National Railroad Adjustment Board, or because the Central failed or refused to acquiesce in the Defendant's demands for a revision of the Cheney award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling or uncoupling hose in addition to their normal wage as compensation. The verified complaint in that mat-
[fol. 285] ter and testimony of Assistant Director of Personnel, Thomas Parker, Jr., was considered by the Court, and a temporary restraining order was issued enjoining the Defendants in accordance with said motion, the order reading that said restraining order would expire at 8:40 P.M., March 1, 1955, unless extended.

6

Also, at the same time, the hearing on the motion for preliminary injunction was assigned at the Post Office Building, in Brunswick, Georgia, at 11 o'clock, A. M. Monday, February 28th, 1955.

7

The complaint in this cause, together with the motions, temporary restraining order, and order assigning hearing on motion for preliminary injunction were filed in the office of the Clerk of the District Court of the United States for the Southern District of Georgia, in Savannah, Georgia, on the following day, Friday February 25, 1955, and were duly served on that day.

8

The original controversy between the Central of Georgia Railway Company and these Defendants which was submitted to arbitration before Referee Cheney concerned whether or not certain trainmen should be required as one of their basic duties to couple and uncouple, air, steam and signal hose, and as a related question, whether or not each
[fol. 286] member of a train crew should be paid an arbitrary sum, in addition to their daily basic wage when any one member of the crew was required to perform this function.

9

In February 1949 the Brotherhood of Railroad Trainmen at the National level, made demands against the railroads of the Nation, at the national level, under the provisions of the Railway Labor Act for many benefits. The railroads made counter proposals to the Union. All of the negotiations between the Union and the Railroads were conducted by committee on the national level. The services of the National Mediation Board were invoked on January 16, 1950, to no avail. Then President Truman appointed an Emergency Fact Finding Board which investigated the disputes and made recommendations which were rejected by the Union. Finally, on May 25, 1951, all but two items in dispute were settled by collective bargaining, induced to a degree through the conciliation efforts of a representative of the National Mediation Board; and were to a collective bargaining agreement dated May 25, 1951.

10

By agreement, the two remaining items in dispute were submitted to arbitration before a person designated a "Referee" to be appointed by the President of the United States. One of these items was the hose coupling question.

11

The agreement under which the parties submitted the hose coupling question to arbitration recited that the de-[fol. 287] cision of the Referee "shall be final and binding on the parties.

12

President Truman appointed George Cheney as Referee to consider the two disputes. After hearing extended testimony and argument, Referee Cheney handed down his award on August 1, 1951, as follows:

"After due consideration, and after being fully advised in the premises, and upon a preponderance of the proof received in this proceeding, the undersigned Referee makes the following Decision and Award, on the first issue ap-

pearing in the ancillary agreement dated May 25, 1951, which was signed by the parties to this proceeding:

"A new Rule should be drafted and inserted in the Principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: 'Rules, agreements, interpretation or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements interpretation or practices, shall be changed to provide for the payment of only 95 cents.

"Individual carriers may elect to accept this rule or retail their present rules or practices without modification, [fol. 288] by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date.

"The decision and award of the undersigned Referee upon the two (2) issues appearing in the ancillary agreement dated May 25, 1951 and which was signed by the parties to this proceeding, shall be final and binding upon said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committee of his Decision and Award, and each Carrier shall make its election within such period, in accordance with the savings clause provisions of the proposed rules."

13

On August 16, 1951, the Central of Georgia Railway Company notified the Defendants that in accordance with the award of the Arbitrator, the Central elected to continue the present practice, which practice was to require the trainmen to perform the coupling function as one of their basic duties for which they are compensated by their basic daily wage.

14

On November 28, 1953, the Defendants on a local level against the Central of Georgia Railway Company, despite the Cheney Award, insisted upon the following contract provision;

"Amendment to Article 41, Coupling and Uncoupling of Air, and/or Steam Hose, etc."

[fol. 289] "Foreman and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

"As a condition of this arbitrary allowance, said employee may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains".

15

The Central of Georgia Railway Company took the position that this demand had been settled adversely to the Defendants by the common law arbitration award by Referee Cheney. The parties could not agree.

16

Thereupon, the National Mediation Board sent a Mediator to Savannah to mediate this dispute. The mediation service was unproductive and as required by the Railway Labor Act, the Mediator suggested arbitration. The Central of Georgia Railway Company told the Mediator that the Central would be agreeable to arbitrate this dispute as recommended by the Mediator. However, despite the willingness of the Central to arbitrate, arbitration could not be consummated.

17

Thereupon, the mediation services were withdrawn on May 25, 1954, the Central received a telegram from the National Mediation Board advising that the Brotherhood [fol. 290] of Railroad Trainmen had called a strike on the Central of Georgia Railway Company for 5:00 P. M., Fri-

day May 28, 1954 unless the matters in dispute were satisfactorily adjusted prior to that time.

18

Faced with this threatened strike and desiring to have the effect of the Cheney Award adjudicated, the Central of Georgia Railway Company filed its petition on May 26, 1954, in Chatham Superior Court for a declaratory judgment and injunctive relief against the same Defendants named in the instant complaint, seeking to have the Superior Court of Chatham County, Georgia, take jurisdiction of the matter, enter a declaratory judgment as to whether or not the Cheney Award permanently settled the matter committed to Referee Cheney and issue a temporary restraining order, interlocutory injunction, and permanent injunction, preventing a strike on the demand for the rule change noted above, pending a decision of the case.

19

The Superior Court of Chatham County took jurisdiction, granted a temporary restraining order but denied the interlocutory injunction after hearing general demurrers of the Defendants to the petition of the Central of Georgia. At the hearing, the Defendants attacked the petition on the merits and challenged the jurisdiction of the Chatham County Superior Court, arguing that the matter submitted to the State Court was within the exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

[fol. 291] 20

The Trial Court took jurisdiction of the cause but dismissed the case on the merits.

21

On appeal the defendants urged before the Supreme Court of Georgia that this matter was within the exclusive jurisdiction of the National Railroad Adjustment Board and that the State Courts had no jurisdiction. The Supreme Court of Georgia rendered a majority opinion in that case

(Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, et al., January 10, 1955, 211, Ga. 274) sustaining the contentions of the Defendants and holding that the matter in controversy was within the exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

22

The judgment of the Supreme Court of Georgia was made the judgment of the trial Court on January 31, 1955. However before this, on January 21, 1955 the Central of Georgia Railway Company submitted the controversy to the National Railroad Adjustment Board under the provisions of the Railway Labor Act.

23

The matter in controversy submitted to the State Court is substantially the same matter which has been submitted to the National Railroad Adjustment Board by the Central of Georgia Railway Company, and is substantially the [fol. 292] same as the controversy reflected in the instant complaint.

24

In this submission to the Adjustment Board, the Central took the position that the Cheney Award had settled adversely to the Defendant's contentions their demands for the proposed rule change of November 28, 1953, quoted in paragraph 14, supra. The aforesaid proposed rule change was the one that gave rise to the aforesaid State Court proceeding in which the Defendants took the position that the matter was subject to the exclusive jurisdiction of the National Railroad Adjustment Board.

25

After the Defendants were notified by the National Railroad Adjustment Board that the submission had been received and filed and that the Defendants would be required to file their reply under the Railway Labor Act not later than February 23, 1955, the Defendants requested that the National Railroad Adjustment Board grant an extension

of thirty days from February 23, 1955, within which Defendant Union would be required to answer the submission. This request was granted.

26

However, the defendants called a strike to force upon the Central of Georgia Railway Company their contentions in this controversy for 6:00 Friday morning. February 18, 1955, "subject to a satisfactory settlement of the pending hose coupling issue."

[fol. 293] 27

After the National Mediation Board tendered its services on February 16, 1955, and requested that the Defendants "postpone the strike date pending mediation". On the same day, the Defendants postponed the strike "pending mediation proceedings."

28

The National Mediation Board sent a Mediator to Savannah to make further efforts to bring the parties to a settlement of the dispute. The mediation efforts were unsuccessful, although the Central of Georgia Railway Company again indicated a willingness to settle the dispute by arbitration, as recommended informally by the Mediator. The Mediator indicated that the Defendants would not be agreeable to arbitrating the dispute.

29

The efforts of the Mediator to bring about a settlement of this dispute were discontinued on Thursday afternoon February 24th although formal telegraph notice of the withdrawal of the mediation service was not received until Friday afternoon, February 25, 1955.

30

The Central of Georgia Railway Company was threatened with an immediate system-wide strike on this issue on the afternoon of Thursday, February 24, 1955, and also feared wildcat strike at that time. Defendants had advised the Mediator prior to Thursday evening, February 24,

[fol. 294] 1955, that if Mediation did not produce a settlement satisfactory to the Defendants, that a strike would be called, and that wildcat strikes were a distinct possibility.

31

On Thursday, February 24, 1955 the Central of Georgia Railway Company was threatened with an immediate system-wide strike which would completely stop the operations of the company, and completely disrupt the Central's inter and interstate passenger and freight service. Such a threatened strike would have resulted in immediate and substantial irreparable injury, loss and damage to the Central.

32

Such a strike would have resulted in monetary damages to the Plaintiff far in excess of $3000. The daily loss in gross revenue alone would exceed $100,000. The strike would cause the patrons of the Central of Georgia Railway Company to patronize competitive carriers and the degree of permanent loss of business is incalculable.

33

Such a strike conceivably would be disastrous to all of the employees of the Central, as well as the Central itself, the degree of damage depending upon the duration and violence of the strike. Many disinterested employees would be laid off. Also the area served by the Central would be irreparably damaged. The Central would be prevented from performing its obligations as a common carrier.

[fol. 295] 34

The Central of Georgia Railway Company was threatened with unlawful acts by the Defendants which would result in damage to its property and which could be prevented only by the granting of the injunctive relief sought in this action. Immediate and substantial irreparable loss, injury and damage was threatened to Plaintiff's property.

35

Any possible injury which could result to the Defendants from the granting of the preliminary injunction in this case would properly be protected by adequate surety bond and appropriate records, and the potential injury to the Defendants resulting from such injunctive relief is infinitesimal compared to the threatened injury to the Plaintiff.

36

Public Officers charged with the duty to protect Plaintiff's property could not possibly furnish protection adequate to prevent the threatened injuries.

37

The Plaintiff volunteered to protect the Defendants by maintaining adequate hose coupling records and by posting bond.

[fol. 296] CONCLUSIONS OF LAW

1

Venue in this case is properly laid in the District Court of the United States for the Southern District of Georgia, Savannah Division.

2

This Court has jurisdiction over this complaint because this is an action arising under the laws of the United States regulating commerce within the intent of Title 28 U. S. C. Sec. 1331 and 1337. The amount in controversy greatly exceeds the sum of $3,000 exclusive of interest and costs. The Particular laws of the United States under which this action arises are the Railroad Labor Act, Title 45, U. S. C. Sec. 151, et seq. and the Interstate Commerce Act, Title 49 U. S. C. Sec. 1, et seq.

3

The Defendants Brotherhood of Railroad Trainmen is the duly authorized exclusive bargaining representative of Defendant Class under the Railway Labor Act.

4

Prior to the bringing of this action, except for final determination by the National Railroad Adjustment Board, Plaintiff had exhausted all of its administrative remedies, including the mediation procedure required by the Labor Act, Title 45 U. S. C. Sec. 155 et seq.

[fol. 297]

5

The National Railroad Adjustment Board under the Railway Labor Act, Title 45, U. S. C. 151, et seq. has exclusive jurisdiction of the controversy described in this complaint, which has been referred to the National Railroad Adjustment Board by the Plaintiff herein. The Supreme Court of Georgia has held that such jurisdiction is exclusive in a case between these same parties involving substantially these same issues. (Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, 211 Ga. 274.) The Defendants impliedly agreed that the National Railroad Adjustment Board has jurisdiction in this case, by the evidence submitted in this case, including the claims of the Defendants that the National Railroad Adjustment Board had jurisdiction in the identical case in the Superior Court of Chatham County, Georgia referred to in this suit.

6

The threatened strike on an issue pending before the National Railroad Adjustment Board and over which the said Board has exclusive jurisdiction is violative of the Railroad Labor Act (Title 45 U.S.C. 151 et seq.) The main issue before the National Railroad Adjustment Board is whether or not the rule change which the Defendants seek to enforce by strike, would be violative of the Cheney arbitration award and the Defendants agreement to submit the matter to Referee Cheney.

7

The controversy concerning which the strike is threatened and which is outlined in the instant complaint is, sub-

[fol. 298] stantially the same controversy which was before the Supreme Court of Georgia and which has been sub-

mitted to the National Railroad Adjustment Board for determination by the Plaintiff, Central of Georgia Railway Company.

8

Plaintiff is facing certain and immediate, substantial and irreparable injury, loss and damage if this preliminary injunction is not issued and Plaintiff has no adequate remedy at law.

9

This Court has jurisdiction to issue a preliminary injunction in this case restraining the Defendants from striking to compel the Plaintiff Railroad Company to accept Defendant's demands, in order to prevent impending immediate irreparable injury, in a controversy over which the National Railroad Adjustment Board has exclusive jurisdiction, which has been referred to the National Railroad Adjustment Board for decision and which is before said Adjustment Board for decision at the time the injunction is sought.

The Norris-LaGuardia Act was not intended by Congress to deprive a District Court of jurisdiction to maintain the status quo by Preliminary injunction to prevent immediae irreparable injury, loss or damage, in a controversy over which the National Railroad Adjustment Board has jurisdiction, which has been submitted to the Adjustment Board for determination and is before the National Adjustment Board for decision. The Railway Labor Act [fol. 299] was amended in 1934, some two years after the Norris-LaGuardia Act (Title 29 U. S. C. 101 et seq.) and was intended by Congress to provide for an orderly settlement of grievances and disputes in the Railroad industry. It was designed to minimize and prevent wherever possible the hardship, tragedy and economic chaos, and irreparable injury which inevitably and necessarily result from strike; which does severe injury to the employee and irreparable damage to the Railroad Company and the general public. The amended Railway Labor Act was designed to prevent interruptions in interstate commerce caused by railroad strikes wherever possible within the provisions of the Act. Congress intended and the Railroad Labor Act required

that the railroad companies and the representatives of the railroad employees should make every effort to settle their differences between themselves in accordance with the procedure set up by the Railroad Labor Act. If settlement could not be reached thereby, Congress intended and the Act requires that such matters as come within the exclusive jurisdiction of the National Railroad Adjustment Board should be referred to that body for decision before either side resorted to self help. This conclusion is grounded upon the obvious purposes of the Railway Labor Act as expressed in the Act. Sec. 1a (Title 45 U. S. C. Sec. 151a); Sec. 2 First (Title 45 U. S. C. A. Sec. 152 First); Sec. 2 Second (Title 45 U. S. C. A. Sec. 152 Second) and Sec. 3 (i) Title 45 U. S. C. A. Sec. 153 (i). See also the Legislative History of the 1934 amendment to the Railway Labor Act (Senate Report No. 1065 (73rd Congress, Second Session, pp. 1-2; House Report No. 1944, 73 Congress Second Session, p. 2 et seq.) See also Elgin J & E. R. Co. v. Burley, 325 U. S. 711; 89 L. Ed 1886; 65 S. Ct. 1282.

[fol. 300] 10

Although no reported case "on all four" with the instant case came to the attention of the Court, the decided cases support the above conclusions.

Perhaps the parent case of the United States Supreme Court on this subject is Virginian Railroad v. System Federation, 300 U. S. 515; 81 L. Ed 799, 57 S. Ct 592, which involved a case brought by a union to compel by injunction a railroad company to recognize it as the authorized employee representative and for other relief. There the Defendant railroad sought to invoke the Norris-LaGuardia Act as a bar to injunctive relief in the Federal Courts. The Court accepted the argument that the Railway Labor Act which was enacted after the Norris-LaGuardia Act dealt with the specific problem and would prevail, saying:

"The power of Congress over interstate Commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders".

"It suffices to say that the Norris-LaGuardia Act can effect the present decree only so far as the provisions are found not to conflict with those of Sec. 2 Ninth of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act".

[fol. 301] In the case of Order of Railway Conductors v. Pitney, 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct 322, it was held at pp 567 and 568 of 326 U. S.:

"But the Court should not have interpreted the contracts for the purpose of finally adjudicating the dispute between the Unions and the railroad. The dismissal of the cause should, therefore, be stayed by the District Court so as to give an opportunity for application to the Adjustment Board for an interpretation of the agreement".

The decision in the Pitney case, supra, clearly indicates that a District Court of the United States has jurisdiction to maintain the status quo by injunction pending determination of an issue submitted to the National Railroad Adjustment Board and within its equitable discretion it may grant or deny such relief.

For other decisions of the Supreme Court of the United States which would seem to support this conclusion, see Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western R.R. 321 U. S. 50, 88 L. Ed. 64 S Ct 514; Brotherhood of Railroad Trainmen v. Howard 343 U. S. 768; 96 L Ed 1283 72 S Ct. 1022 Graham v. Brotherhood of L. F. & E. 338 U. S. 232, 94 L Ed 22 70 S. Ct. 14.

One of the latest Circuit Court decisions bearing on this point is the case of Rolfe's v. Dwellingham, et al. 198 F. (2d) 591 (8th Circuit) (no record of appeal). In this case the District Court issued an injunction requiring the Trustee of the Missouri Pacific Railroad Company to refrain from displacing "waiters-in-change" pending a decision by the National Railroad Adjustment Board, or [fol. 302] pending a reasonable time within which the Matter might be submitted to the Board. The Circuit Court sustained the jurisdiction of the District Court to grant such relief, holding:

"The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce.

"Also, we consider the decisions of the Supreme Court on Graham V. Bro. of L. F. & E. 338 U. S. 232, 70 S Ct 14, 94 L. Ed. 22; Virginian R. Co., v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592 81 L. Ed 789 Steele v. Louisville & Nashville R. Co. 323 U. S. 192 65 S. Ct. 226 89 L. Ed 173; and Tunstall v. Bro. of L. F. & E., 323 U. S. 210 65 S Ct 235, 89 L. Ed 187, equally conclusive that the Norris-LaGuardia Act does not deprive the Federal Courts of power to issue such an injunction as has been issued here in aid of the administrative board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by the Congress under the Railway Labor Act."

In Sadler v. Union R. Co., 123 F. Sup. 625, the District Judge for the Western District of Pennsylvania held that it had jurisdiction to restrain enforcement of an award and to restore the status quo pending the submission of a dispute to the National Railroad Adjustment Board or National Mediation Board.

In the case of Railway Employees Co-op Assn. et al. v. A. B. & C. R. Co., 22 F. Sup 510 (Georgia District) (no record of appeal) Judge Underwood restrained a railroad [fol. 303] company pending a decision by the National Mediation Board of the proper bargaining representatives of the employees. He held that the Railway Labor Act created property rights in the employees which will be protected by a Court of equity despite the Norris-LaGuardia Act.

In the case of U. S. v. Brotherhood of L. E. (1948) (D. C. Dis. of Col.), 79 F. Sup 485; 174 F. (2d) 160; Cert. den 335 U. S. 867; 93 L. Ed 412, 69 S. Ct. 137, The District Court granted the United States as a permanent injunction restraining a railroad strike after mediation under the Railway Labor Act had failed, holding that the Norris-LaGuardia Act could not prevent injunctive relief in such a situation.

In the case of M. K. T. R. Co., v. Bro. of Ry and S. S. Clerks, 88 F. (2d) 302 (C. A. 7 1951) (No record of appeal)

the Court held that the District Court did not abuse its discretion in granting an injunction on behalf of the railroad to enjoin enforcement of separate awards of the National Adjustment Board, pending a final determination of a controversy before the National Railroad Adjustment Board in regard to the inconsistent awards.

11

The granting of the preliminary restraining order in this case will not impinge or restrict the actions of the Defendant employees in promoting their own interest against the Plaintiff excepted in the restricted sphere of the controversy before the National Railroad Adjustment Board. Within that sphere, the Defendants will be protected by adequate records and bond.

[fol. 304] The decree in this case will be restricted generally to restraining a strike by Defendants to force the Plaintiff to agree to the contract provision proposed by Defendants on November 28, 1953, or any similar provision. (See Par. 14 of findings). Defendants argue that the restraining order should not apply to "trainmen" as distinguished from "yardmen" asserting that the Cheney Award applies only to "yardmen". True the award itself mentions only "yardmen" however Cheney's findings deal with both "trainmen" and "yardmen". Also the Plaintiff's case in the State Court and before the National Railroad Adjustment Board involves both "yardmen" and "trainmen" as covered in Defendant's proposed contract provision of November 28, 1953. It would be improper for this Court to interpret the Cheney Award to decide the dispute between the parties as to whether the award applies to both "trainmen" and "yardmen", or only to "yardmen". That is one of the issues before the Adjustment Board. Both "trainmen" and "yardmen" are inseparately interwoven in this dispute. Both will be enjoined and both will be protected by bond and appropriate record.

Thus it is concluded that this is a proper case in which the District Court of the United States should, in the exercise of its discretion, grant a preliminary injunction, maintaining the status quo in a controversy, where this Court concludes that the National Railroad Adjustment Board

has exclusive jurisdiction; where said dispute is currently before said Board in accordance with the Railway Labor Act; where irreparable injury will result to the Railroad, the general public, and perhaps the employees, if the relief is denied; and where the employees' rights can be adequately protected by appropriate records and bond.

[fol. 305] IN UNITED STATES DISTRICT COURT

JUDGMENT—MARCH 10, 1955

Based upon the foregoing findings of fact and conclusions of law, and in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board,

It Is Considered, Ordered and Adjudged:

1

Pending further order of this Court and pending a final hearing in this case, the Defendants in this cause and each of them, their agents, representatives and all parties acting through or under them, or through their order, be and they are hereby restrained and enjoined by this preliminary injunction from threatening to or from calling a strike, work stoppage, or picketing, system-wide or local, of any kind or character, or from using any similar device, either directly or indirectly, through themselves, their agents or others, against the Central of Georgia Railway Company, and from striking, stoppage of work, picketing or from using any similar device, in an effort to or designed or intended:

A. To compel the Plaintiff to agree with the Defendants to a cancellation, modification, change or revision of the award of Referee George Cheney dated August 1, 1951 to wit:

"After due consideration and after being fully advised in the premises, and upon a preponderance of the proof received in this proceeding, the undersigned Referee makes the following decision and award, on the first issue appear-
[fol. 306] ing in the ancillary agreement dated May 25, 1951, which was signed by the parties to this proceeding;

"A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam or signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made, but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling, air, steam and signal hose, such rules, agreements, interpretations or practices shall be changed to provide for the payment of only 95 cents.

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951 and if accepted the date of such notification shall become the effective date.

"The decision and award of the undersigned Referee upon the two (2) issues appearing in the ancilliary agreement dated May 25, 1951, and which was signed by the parties to this proceeding, shall be final and binding upon the said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committees of his decision and Award, and each Carrier shall make its election within such [fol. 307] period, in accordance with the savings clause provisions of the proposed rules."

of the consummation thereof; or

B. To compel the Plaintiff to agree to or to consummate a rule or contract provision with the Defendants inconsistent with the Cheney Award, and specifically from compelling the Plaintiff to agree with Defendants to the following Rule first proposed by the Defendants on November 28, 1953, or any similar contract provision;

"Amendment to Article 41, Coupling or uncoupling of Air and/or Steam hose, etc.

"Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per

day or trip regardless of miles or hours involved in the day or trip".

"As a condition of this arbitrary allowance, said employee may be required to couple and/or uncouple air brakes, signal and steam hose, couple or uncouple vestibule curtains."

or,

C. To compel the Plaintiff to agree to or to consummate a contract provision with Defendants prescribing extra compensation to Defendant Class of employee for uncoupling air, steam or signal hose, which would in any way be inconsistent with the aforesaid Cheney Award.

[fol. 308] 11

It Is Further Ordered that the Central of Georgia Railway Company:

A. Have executed and filed with the Clerk of this Court a bond in the penal sum of $100,000.00 with sufficient and adequate Surety, to be approved by the Clerk or Deputy Clerk of this Court; said Bond to be conditioned to pay the Defendants or any of them, any loss, expense, and/or damage accruing to the Defendants or any of them as a result of this order, including all reasonable cost and expense of defense, including reasonable attorney's fees, should it be determined that this injunctive relief was granted improvidently or in error; and further conditioned upon the following: Should a Rule or contract provision be executed, within two years after this case is finally concluded, between the Central of Georgia Railway Company and the Defendants, with reference to the payment of an arbitrary for the coupling and uncoupling of air, steam, signal or steam hose, as was requested by Defendants on November 28, 1953, in their proposed rule change as follows:

"Amendment to Article 41, Coupling or uncoupling of Air and/or Steam Hose, etc.

"Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per

day or trip regardless of miles or hours involved in the day or trip."

[fol. 309] "As a condition of this arbitrary allowance, said employee may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains."

said rules shall be applicable or retroactive at least to the period from February 24, 1955, at 8:40 P. M. to the date of the expiration of thirty days from the date that this suit is finally concluded by order of this Court; and when payment shall have been made for the aforesaid loss, expense and/or damage, and for such prescribed period by the Plaintiff to the Defendants, or such of them as provided for in said rule, in such amounts as are called for in said rule, then this bond shall be void, otherwise of full force and effect.

B. That the Plaintiff maintain and preserve accurate and complete records of all such coupling and uncoupling functions performed on said railroad from February 24, 1955, which records shall be kept open for an inspection by a named representative of Defendants at reasonable times.

This order is not to be construed as effecting any action of the Defendants in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute.

Dated this 10th day of March 1955, at Brunswick, Georgia.

F. M. Scarlett, District Judge, U. S. District Court, Southern Dis-rict of Georgia.

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[fol. 310] FINDINGS, CONCLUSIONS AND JUDGMENT—
Filed March 11, 1955

IN UNITED STATES DISTRICT COURT

BOND SUPPORTING PRELIMINARY INJUNCTION—
Approved March 11, 1955

Whereas, The Central of Georgia Railway Company, plaintiff in captioned cause, has moved the Court to issue a preliminary injunction, and the Court has rendered its find-

ings of facts, conclusion of law, and has granted the preliminary injunction; and

Whereas, said preliminary injunction requires the execution of a bond containing the following conditions to be approved by the Clerk, and to be filed in this Court; and

Whereas, The Central of Georgia Railway Company does desire to herewith comply with said bond requirement;

Now, Therefore, Central of Georgia Railway Company, Principal, and National Surety Corporation, as Surety, do hereby acknowledge themselves jointly and severally held and bound unto the Defendants in said cause, their heirs and successors and assigns, in the penal sum of One Hundred Thousand (100,000.00) Dollars, for the payment of any loss, expense, and/or damage accruing to the defendants or any one of them as a result of this order, including all reasonable costs and expense of defense, including reasonable Attorney's fees, should it be determined that this [fol. 311] injunctive relief was granted improvidently or in error; and further conditioned upon the following; should a rule or contract provision be executed within two years after this case is finally concluded, between the Central of Georgia Railway Company and the Defendants, with reference to the payment of an arbitrary for the coupling or uncoupling of air, signal or steam hose as was requested by defendants on November 28, 1953, in their proposed rule change as follows:

"Amendment to Article 41 Coupling or Uncoupling of Air and/or Steam Hose, etc.

"Foremen and Switchmen employed in yards, and trainmen employed on Switch local assignment and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

"As a condition of this arbitrary allowance, said employees may be required to couple and/or uncouple air brakes, signal and steam Hose; couple or uncouple vestibule curtains."

said rule shall be applicable or retroactive at least to the period from February 24, 1955, at 8:40 P. M. to the date of the expiration of thirty days from the date of this suit

is finally concluded by order of this Court; and when payment shall have been made for the aforesaid loss, expense, and/or damage, and for such described period by the plaintiff to the Defendants, or such of them as provided for in said rule, in such amounts as are called for in said rule, then this bond shall be void, otherwise of full force and effect.

[fol. 312] In Witness Whereof, the Principal and Surety have caused the execution and sealing of this instrument by their proper corporate officers or attorney-in-fact, this 10th day of March 1955.

Central of Georgia Railway Company, Principal. By H. L. Fulton, Jr., Vice-president,

Attest:

M. M. McLaughlin, Asst. Secretary. National Surety Corporation, By S. Hammon Story, Attorney-in-fact.

Attest:

Joan Follett.

Approved by me this 11th day of March 1955.

Margaret Clarke, Chief Deputy Clerk, United States District Court, Southern District of Georgia.

Bond Supporting Preliminary In-unction Filed March 11th, 1955.

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[fol. 313] In United States District Court

Order re Filing of Answer—March 29, 1955

Upon good cause shown to the Court, and it appearing that the plaintiff has waived the time of filing,

And It Further Appearing that defendants filed their answer with the Clerk of this Court on March 21, 1955,

It Is Hereby Ordered that the time of the filing of the defendants' answer as above stated be, and the same is, hereby enlarged so as to constitute filing in proper time and in accordance with the rules of civil procedure.

So Ordered, this 29 day of March, 1955.

(s) F. M. Scarlett, Judge, United States District Court.

In United States District Court

Answer—Filed March 21, 1955

Civil Action 797

Now come the Brotherhood of Railroad Trainmen et al., defendants in the above entitled cause, subject to their motion to dismiss heretofore filed, and for their answer to the petition filed herein, say as follows:

First Defense

Defendants say that the issues raised are not justifiable and the Court is without jurisdiction of the subject matter of the complaint.

[fol. 3141

Second Defense

The petition fails to state a claim against defendants upon which relief can be granted.

Third Defense

Defendants say that the Court is without jurisdiction because the plaintiff has not exhausted its administrative remedies.

Fourth Defense

The Court is without jurisdiction because of the Norris LaGuardia Act, Title 29, Sections 101 and 115.

Fifth Defense

That the plaintiff is not entitled to injunctive relief because it failed to make every reasonable effort to settle the dispute by negotiation with the aid — any governmental machinery or mediation as required by Title 29, Section 108, U.S.C.A.

Sixth Defense

For their sixth defense, defendants admit, deny and allege as hereinafter set forth.

(1) Defendants admit paragraphs one and two of the petition.

(2) In answer to paragraph three, defendants admit

all the allegations therein, except the following which they expressly deny, " . . . and there is presented by this peti-
[fol. 315] tion a common question of law and fact effecting their several rights. . . . "

(3) Defendants admit paragraph four of the petition.

(4) Defendants deny paragraph five of the petition.

(5) In answer to paragraph six, defendants admit the allegations thereof, except the following, "or whether the matter was settled only for the duration of a certain collective bargaining agreement", which they expressly deny.

(6) Paragraph seven of the petition is admitted.

(7) In answer to paragraph eight, defendants admit there was a second amendment filed to the original petition as therein alleged, but deny that the second amendment is not essential to a proper statement of the complaint.

(8) Defendants admit paragraphs nine, ten and eleven of the petition.

(9) In answer to paragraph twelve of the petition, defendants admit that they filed a general demurrer to the said cause, and that the same was argued as alleged. Except as herein admitted, the allegations of paragraph twelve are denied.

(10) Paragraphs thirteen and fourteen of the petition are admitted.

(11) In answer to paragraph fifteen defendants admit that the argument of both of bill of exceptions and the
[fol. 316] cross-bill of exceptions was heard before the Supreme Court of Georgia. Except as herein admitted, the allegations of paragraph fifteen are denied.

(12) In answer to paragraph sixteen of the petition, defendants admit that the Supreme Court handed down a decision and admit that Exhibit "C" as attached to the petition is a correct copy of the opinion, but expressly deny that the Court held that the controversy submitted in the petition should have been referred to the National Railroad Adjustment Board.

(13) For lack of sufficient information at this time, defendants are unable to admit nor deny the allegations of paragraphs seventeen and eighteen.

(14) Paragraph nineteen of the petition is admitted.

(15) In answer to paragraph twenty (a) of the petition,

defendants admit that defendant Byington addressed a communication to the Executive Secretary and requested a thirty (30) day extension within which defendants would be required to answer; and that the said Board granted the request of the said Byington. Except as herein admitted, the allegations of paragraph twenty (a) are denied.

(16) Defendants admit the allegations of paragraph twenty (b), paragraph twenty-one and paragraph twenty-two of the petition.

(17) In answer to paragraph twenty-three defendants admit "that the strike was postponed pending mediation" and that no agreement was reached. Defendants deny that the mediator offered arbitration to the defendants and [fol. 317] consequently deny that they refused to submit the said matter to arbitration, and for lack of sufficient information neither admit nor deny that the plaintiff was agreeable to arbitrate.

(18) In answer to paragraph twenty-four, defendants admit that they were unwilling to leave the matter in status quo, but specifically deny the remaining allegations of said paragraph.

(19) In answer to paragraph twenty-five of the plaintiff's petition, defendants admit that they probably will go on strike unless the question of adopting a new rule is settled, but deny the conclusions as to the effect of said strike as alleged in paragraph twenty-five.

(20) Defendants deny the allegations of paragraph twenty-six of the plaintiff's petition and call for proof thereof.

(21) Paragraphs twenty-seven and twenty-eight of the petition are denied.

(22) Defendants deny the allegations of paragraphs twenty-nine and thirty of the petition.

(23) Defendants neither admit nor deny the allegations of paragraph thirty-one of the petition.

(24) In answer to paragraph thirty-two defendants say that the Court has no jurisdiction to comply with the request therein contained.

[fol. 318] (25) Except as expressly admitted in this answer, each and every allegation of the petition of the plaintiff's is denied.

Wherefore Defendants Pray:

That the petition herein be dismissed and that the defendants have and recover against the plaintiff and its bondsman for their loss, expenses and damages including all reasonable costs and expenses of defense together with reasonable attorney's fees, as more specifically set out in Title 29, Section 107 (e) U.S.C.A.

(s.) Myrick & Myrick, Attorneys for defendants.

P. O. Box 24, Savannah, Georgia.

Personally Appeared before the Undersigned, an Officer duly authorized to administer oaths, L. E. Chester, one of the defendants in the above entitled cause, who after being duly sworn, deposes and says that the matters and facts set forth in the foregoing answer are true.

(s.) L. E. Chester.

Sworn to and subscribed before me this 18th day of March, 1955.

(s.) Willis J. Richards, Jr., Notary Public, Chatham County, Georgia.

(Notarial seal.)

[fol. 319] On back of Defendant's answer:

Savannah, Ga., March 21, 1955.

I, Shelby Myrick, Jr., of Counsel for Defendants hereby certify that I have this day served a copy of the within answer upon John B. Miller, Attorney for the plaintiff by handing him a copy.

(s.) Shelby Myrick, Jr.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73(B) AND TITLE 29, SEC. 110, U. S. C. A.—Filed March 30, 1955

To the Honorable Eugene Edwards, Acting Clerk of the District Court of the United States for the Southern District of Georgia, Savannah Division:

Notice is hereby given that the Brotherhood of Railroad Trainmen, Local Lodge No. 721, Brotherhood of Railroad Trainmen, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Purdue, and the Class of Employees of the Central of Georgia Railway Company represented by the foregoing named defendants [fol. 320] in the above entitled cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the orders of the Honorable F. M. Scarlett, District Judge, United States District Court for the Southern District of Georgia in overruling the motion to dismiss of the defendants, by order dated February 28, 1955, and in granting temporary injunction to the plaintiff in the above styled cause, by order dated March 10, 1955.

Myrick & Myrick, Wayland K. Sullivan, Benning M. Grice, Attorneys for appellants, Brotherhood of Railroad Trainmen, Lodge 721 et al.

Notice of appeal. Filed March 30, 1955.

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IN UNITED STATES DISTRICT COURT

APPEAL BOND—Filed March 30, 1955

GEORGIA,
Chatham County.

Know All Men By These Presents, That, we, the Brotherhood of Railroad Trainmen, Lodge No. 721, by its duly authorized officers and L. E. Chester as Principal and Mrs. I. Sasseen as Surety, are held and firmly bound unto the defendant in error, the Central of Georgia Railway Company in the full and just sum of Two Hundred Fifty (250.00) Dollars to be paid to the Central of Georgia Rail-

way Company, its attorneys, executors or assigns, to which payment well and truly to be made, we have bound ourselves, our heirs, executors and administrators jointly and severally by these presents.

[fol. 321] Sealed with our seals and dated this 30th day of March 1955.

Whereas, lately at the District Court of the United States for the Southern District of Georgia, Savannah Division in suit pending in said Court between the Central of Georgia Railway Company, Plaintiff and the Brotherhood of Railroad Trainmen et al., defendants two orders and judgments were rendered against the defendants, and the said defendants have served notice of an appeal and filed a copy thereof with the Clerk of said Court to reverse the orders and judgments of the Court in the aforesaid suit in the United States Court of Appeals for the Fifth Circuit.

Now, the condition of the above obligation is such that if the Brotherhood of Railroad Trainmen, et al. shall prosecute the writ of error to effect and answer all damages, pay all costs if the appeal is dismissed and the judgment affirmed, then the above obligation to be void, else to remain in full force and effect.

Brotherhood of Railroad Trainmen Lodge Number 721, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, By Shelby Myrick, Jr., One of the attorney of record duly authorized to execute this Bond.

[fol. 322] Mrs. I. Saseen, Surety, By W. J. Saseen, Attorney in Fact. (L. S.)

Appeal Bond, Filed March 30, 1955.

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In United States District Court

(Title Omitted)

Designation of Record—Filed April 4, 1955

The appellants hereby designate the complete record and all the proceedings and evidence to be contained in the

record on appeal in the above entitled case, including all pleadings, motions, orders, transcript of evidence, objections to proposed findings of fact and conclusions of law and judgment, findings of fact, conclusions of law, and judgments, notices of appeal, orders extending time for filing and docketing records on appeal, and this designation of the record on appeal.

This April 2, 1955.

(s.) Wayland K. Sullivan, Myrick & Myrick, Benning M. Grice, Attorneys for Appellants, Brotherhood of Railroad Trainmen, et al.

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Certificate of Service—(omitted in printing)

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[fol. 323] In United States District Court

Order Extending Time for Filing and Docketing Record on Appeal—May 3, 1955

For good cause shown, It Is Ordered that the time for filing and docketing the record on appeal in the within case in the United States Court of Appeals for the Fifth Circuit is hereby extended to and including June 28, 1955.

This 3rd day of May, 1955.

F. M. Scarlett, U. S. District Judge

In United States District Court

[Title Omitted]

Objections to Proposed Findings of Fact, Conclusions of Law and Order—Filed May 16, 1955

The defendants respectfully object to the proposed Findings of Fact, Conclusions of Law, Order of the Court and [fol. 324] bond form submitted in the particulars and for the reasons hereinafter appearing:

I

Defendants object to the order granting a temporary injunction because sufficient facts have not been found and

supported by evidence to meet the requirements of the Norris-LaGuardia Act (29 USC 101 et seq). The record contains no evidence to show that unlawful acts have been threatened and will be committed unless restrained or will be continued. It contains no evidence whatever as to the inability or failure of public officials to furnish protection other than the conclusion of Witness Collins which is wholly unsupported by evidence of any damage done or threatened, and this we submit is not sufficient. The evidence shows that the plaintiff has failed to make every reasonable effort to settle the dispute either by negotiations or with the aid of available governmental machinery.

The evidence discloses that the Cheney Award was part of a Mediation Agreement. The May 25, 1951 Agreement was reached through the mediatory efforts of the National Mediation Board and not by collective bargaining as the proposed Findings of Fact in paragraph 9 state (to which defendants' specifically object).

The Mediation Agreement provides that the decision of Referee Cheney shall be final and binding. If any agency be called upon to construe "final and binding", that construction must be applied to the Mediation Agreement.

[fol. 325] Section 5, First (b) of the Railway Labor Act provides that mediation agreements must be construed by the National Mediation Board. It is true that the Mediation Board sent a mediator on the property to try to avoid the threatened interruption of service; but there is not the slightest shred of evidence that the Board or the mediator was asked to construe the words "final and binding" contained in the Mediation Agreement. Until this is done, the carrier has not exhausted the possibility of settlement before the Mediation Board. The carrier is not excused from this obligation by running to the National Railroad Adjustment Board. In fact, the carrier's lack of good faith is demonstrated by its selection of a tribunal whose decision it knows will long be deferred. Nor is the carrier excused by defendants' admission with respect to the National Railroad Adjustment Board, which admission was made in this Court for the purposes of our motion to dismiss (and in the Superior Court for the purposes of the special demurrer). The Mediation Agreement first entered

the record after the Court had denied our motion to dismiss, and was offered solely in opposition to the motion for temporary injunction.

Moreover, after the motions to dismiss had been disposed of, the Brotherhoods' demands for a change of rules and practices to which the Cheney Award related was admitted. Then for the first time, the controlling effect of Section 5, First (a) appeared. This subsection again invokes the jurisdiction of the Mediation Board. The Record shows that no proffer of arbitration was ever made by the mediator to the employees. The statute requires this to be done. Until it is done mediation is still progressing. It was not done; and as to this the record is [fol. 326] clear. Section 5, First (b) specifically and categorically states:

If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act."

The duty thus created is an affirmative one. "The parties" intended means both parties. The record shows conclusively this was not done. We submit that Witness Collins' testimony as to the mediator's opinion of the futility of proposing arbitration to the men is not evidence of the performance of that duty. Nor does the Witness's remarks reflecting upon the methods and practices of mediators generally constitute any evidence of the performance of that duty or termination of mediation.

The carrier in fact has adamantly contended that the change in the rules and practices demanded were not negotiable. This we submit is not good faith collective bargaining under the decision of Clerks v. Atlantic Coast Line, 201 Federal, 2nd page 36. Here again it is demonstrated that an injunction should be denied for failure to perform its statutory duties with respect to collective bargaining.

II

Defendants strenuously object to the Court's assumption of jurisdiction. The right to demand the change in [fol. 327] rules and practices is not a justiciable issue. Under the clear decisions of the Supreme Court of the United States, the Court simply lacks jurisdiction, to say nothing about the abuse of discretion in issuing one because of this and the other points which have been raised.

III

Defendants object to the granting of a temporary injunction because the record shows clearly that administrative remedies have not been exhausted.

IV

Defendants strenuously object to the inclusion of roadmen in the decree. The Cheney Award specifically refers by its very terms to "yardmen" and "yardmen" only. The decree proposed flouts the instructions of the Court in this regard.

V

Defendants object to that portion of the proposed bond and order of the Court relating to retroactive pay for the men should it ultimately be determined that the rules and practices on this property to which the Cheney Award relates are terminable in accordance with the Railway Labor Act. The bond and order in this respect are simply not what the Court directed.

In lieu of the provisions contained in said proposed bond and order, said instruments should read as the Court directed, to-wit:

"Should the question as to the finality of the Cheney Award be determined adversely to the plaintiff by any [fol. 328] board or Court having jurisdiction, then the condition of said bond shall be that the carrier pay to all the employees involved retroactively to February 25, 1955, that rate to be determined by an agreement to be negotiated between the parties with respect to the subject matter of

the demand served upon the Central of Georgia on or about November 28, 1953, reading as follows:

'Amendment to Article 41 Coupling and uncoupling of Air and/or Steam Hose, etc.

'Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

'As a condition of this arbitrary allowance, said employees may be required to couple and/or uncouple air brake, signal and steam hose; couple or uncouple vestibule curtains;'

and when such payment shall have been made retroactively by the plaintiffs and the individual defendants in accordance with said rules and attorneys fees and other expenses paid in accordance with the Courts' order, then said bond shall be void, otherwise to remain in full force and effect."

Defendants further object to said bond and order in that no provision is made with respect to reasonable attorney fees.

[fol. 329] VI

Defendants strenuously object to the inclusion in the Finding of Facts any statement with respect to admission by Counsel for the defendants as to the jurisdiction of the National Railroad Adjustment Board unless it be qualified to conform to the fact that said admission was made solely with respect to the motion to dismiss and without any relevancy to the plaintiffs' motion for a temporary injunction. Obviously a motion to dismiss (as well as a demurrer) addresses itself to the facts pleaded by the opposing party.

VII

Defendants object to each of the following matters specifically, as included in the Finding of Facts:

(a) In the first paragraph on page 1 of the submitted proposal the words "pleadings of all parties" is incorrect,

as the plaintiff is the only party those pleadings were heard in this proceeding.

(b) In paragraph 3 of the Finding of Facts the Local Lodge of the Brotherhood is incorrectly described as a bargaining agent. As a matter of fact the General Committee of the Brotherhood of Railroad Trainmen on the Central of Georgia is the bargaining agency.

(c) In paragraph 8 of the Findings of Fact it is categorically stated that the matter referred to Referee Cheney involved the duty of trainmen (roadmen) to couple and uncouple hose. This we submit is not in accord with [fol. 330] the facts. Referee Cheney decided the matter submitted to him and his award shows clearly, unequivocally and without any doubt that only "yardmen" were ruled upon.

(d) Paragraph 9 of the proposed Findings of Facts contains the misleading statement that the May 25, 1951 Agreement was reached through collective bargaining. The carrier knows that the conferences which produced that agreement were "through" efforts of the National Mediation Board and the constant prodding of Dr. John Steelman in connection therewith. That agreement was arrived at "through mediation" as those words are used in Section 5, Second of the Railway Labor Act.

(e) Defendants object to paragraph 14 of the proposed Finding of Facts and that portion which states that the defendants "sought to discard the Cheney Award." The only clear interpretation of the Record is that the defendants sought to change the rules and practices which the plaintiff elected to retain as permitted under the Cheney Award.

(f) Defendants object to the gratuitous statement in paragraph 18 of the proposed Finding of Facts setting forth an alleged desire on the part of the carrier as an explanation of its reasons for rushing into the Superior Court. The statement is without evidentiary support. It is made in the face of the Congressionally recognized fact that restraining orders retard collective bargaining and never produce industrial peace.

[fol. 331] (g) Defendants object to the paragraph now number 23 on page 9 of the proposed Finding of Facts,

stating that the matter submitted to the National Railroad Adjustment Board is identical to the subject of the Cheney Award. In spite of the self-serving conclusion of Witness Collins to that effect, the statement simply is not true. Even a cursory reference shows that the Cheney Award applies to yardmen only, whereas the matter which the carrier elected to submit to the National Railroad Adjustment Board applies to roadmen. Furthermore the Cheney Award involved hose coupling only, whereas the item submitted to the Adjustment Board included curtains. Where, oh where, is the identity. The facts in the record must control over the conclusions of a willing witness.

(h) Defendants object to paragraph 31 of the proposed Finding of Facts wherein it states that the Railroad was threatened "with * * * possible wildcat strikes." We submit that there is not a single shred of evidence of any substance whatever to support this.

(i) Defendants object to paragraph 32 of the proposed Finding of Facts which says the carrier was threatened with an immediate system-wide strike. This is simply not true, as no strike date whatever has been set.

(j) Defendants strenuously object to the reference to violence in paragraph 34 of the proposed Finding of Facts. This is pure speculation. It is worse than the traditional "red herring."

(k) Defendants likewise object to paragraph 37 of the proposed Finding of Facts. This refers to "threatened [fol. 332] injuries" which are purely imaginary fictions in so far as the damages which the Norris-LaGuardia Act treats as justifying an injunction are concerned. There is absolutely no evidence of any substance to support this.

## VIII

Defendants object to each of the following matters appearing under the heading "Conclusions of Law", to-wit:

(a) Defendants object to paragraph 2 of the Conclusions with respect to jurisdiction of the Court,—for the reasons already stated.

(b) Defendants object to paragraph 4 of the Conclusions, as the same is not true, as we have already shown.

(c) Defendants object to paragraph 5 of the Conclusions. The statement with respect to the jurisdiction of the National Railroad Adjustment Board is not true, as we have already shown. Moreover the agreement with respect thereto made by the defendants was made solely in connection with the motion to dismiss, but the paragraph does not so state.

(d) Defendants object to paragraph 6 of the Conclusions as being contrary to law.

(e) Defendants also object to paragraph 7 of the Conclusions as being contrary to the clear facts in the Record. [fol. 333] (f) Defendants object to the last paragraph of (at) the bottom of page 15, all of pages 16, 17, 18 and 19, all under the heading of "Conclusions" as the same are merely an argumentative recital appropriate only for a brief and do not constitute a proper Conclusion of Law in this case.

Respectfully submitted, Myrick & Myrick, By Shelby Myrick, Jr.

Objection to Findings, Conclusion & Judgment May 16, 1955.

[File endorsement omitted.]

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[fol. 334] Clerk's Certificate to foregoing Transcript omitted in printing.

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[fol. 335] Argument and Submission—December 6, 1955 (omitted in printing)

[fol. 336] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15671

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL., Appellants,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY, Appellee

Appeal from the United States District Court for the Southern District of Georgia

OPINION—February 10, 1956

Before HUTCHESON, Chief Judge, and BORAH and BROWN, Circuit Judges

HUTCHESON, Chief Judge: Brought by their employer in the midst of a labor dispute, against the named defendants and the class of employees represented by them, the suit was for: (1) a temporary injunction restraining [fol. 337] them pendente lite, from endeavoring by self help to effect a modification or change of an arbitration award known as the Cheney Award and from calling and putting into effect a strike because of plaintiff's refusal to acquiesce in their demands; (2) a judgment declaring the award final and binding and not subject to modification and change; and (3) a final order making the injunction permanent.

The claim was: that, though in compliance with the decision of the Supreme Court of Georgia,[1] that it should do so, and pursuant to the Railway Labor Act, plaintiff had submitted the controversy between it and the defendants over the Cheney Award to the National Railroad Adjustment Board, the defendants had demanded that a modification of the award be negotiated and had given formal notice that a strike of the employees was being set subject

[1] Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 85 SE(2) 413.

to a satisfactory settlement; that the strike date was once postponed at the intervention of the National Mediation Board, but the mediator had advised plaintiff that his services were fruitless; that the defendants will not agree to leave the matter in status quo pending a decision of the controversy by the National Adjustment Board, and have called a system wide strike against plaintiff to coerce it to adopt defendants' interpretation of the award; and that if the strike becomes effective it will completely close down plaintiff's operations with resulting irreparable injury.

[fol. 338] The defendants filed a motion to dismiss[2] for want of jurisdiction on the ground, among others, that the petition shows on its face that plaintiff is seeking an injunction in the face of, and contrary to, the Norris-LaGuardia Act, Secs. 101-115, Title 29.

This motion denied and a hearing had, the district judge concluding: that the Norris-LaGuardia Act was not intended by Congress to deprive a district court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Adjustment Board; and that it was necessary to preserve the status of the controversy now before the Board; granted the preliminary injunction as prayed,

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[2] "Now comes the Brotherhood of Railroad Trainmen, et al, defendants in the above entitled cause, and moves the court as follows:

"1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

"2. To dismiss the action because the petition shows on its face that the Court is without jurisdiction of the subject matter.

"3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

"4. The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris-LaGuardia Act, Title 29, Sections 101-115 and seeks no other relief."

enjoining defendants from striking, work stoppage, picketing, or any similar device.

Appealing from the order denying its motion to dismiss, for want of jurisdiction, and the order granting the injunction, appellants, presenting four questions[3] for [fol. 339] our decision, thus summarize their principal argument for reversal:

> "In both the overruling of the motion to dismiss the carrier's complaint and in issuing the temporary injunction against the Brotherhood defendants, the trial court violated the Norris-LaGuardia Act. These violations were numerous, repeated and substantial. Duty and candor compel us to say they were also flagrant. Any one of those violations controls and should alone decide the case. Therefore, we shall treat this feature first, before taking up the additional reasons for reversal."
>
> "The policy of the Act as set forth in Section 102 prevades all of its provisions. It was passed primarily to protect labor, not management. By doing so, it was hoped that all industry, labor and management, would be benefited ultimately and thus that the Act would be in the public interest."

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[3] These are:

"First. Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second. Did the railway carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

"Third. Is a demand for a change in rates of pay, rules or working conditions, pursuant to the Railway Labor Act, Sec. 6, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth. Did the arbitration award in question conclude and thus prevent negotiation of the demand given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

We agree with the appellants that this is so. In the Carter case, 131 F(2) 557 where the suit was for an injunction, the court upheld the injunction as to those acts which dealt with such violations as trespassing, injuring property, intimidating, or threatening customers, molesting, assaulting, or intimidating employees, but reversed the injunction in respect of all matters which could be construed [fol. 340] as prohibiting acts which the statute allows. Saying:

> "The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means of advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike, that labor disputes as such are not at all reprobated but encouraged, and only violence in connection with them is forbidden. . . ."

the court went on to hold that the use of injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process.
[fol. 341] In the face of the imperative language of the section,[4] appellee's contention, that the act is not applicable

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[4] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert,

because what was sought to be enjoined was action in breach of a contract embodied in the Cheney Award, is wholly untenable. The same contention has been rejected in case after case holding that the statute requires a contrary ruling.

Nor may appellee find better support for the injunction in its claim that the purpose of the strike and its effect would be to do violence to statutory procedures embodied in the statute for a disposition of controversies by the Railroad Adjustment Board. For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limitation upon the prohibitions of the Statute. Cf. *Wilson & Co.* v. *Birl*, 105 F(2) 948, and *East Texas Motor Freight Lines* v. *Teamsters*, 163 F(2) 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the act. Cf. also *Milk Wagon Drivers Union* v. *Lake Valley Farm Products*, 311 U.S. 91, and 43 C.J.S., 748 and 29 A.L.R.(2) 360.

[fol. 342] In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellee's position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of

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any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment: * * * (d) Aiding any persons involved in any labor dispute; (e) Giving publicity of any labor dispute; (f) Assembling to promote their interests; (g) Advising as to any of the acts heretofore specified; and (h) Agreeing with others to do or not to do any of the acts heretofore specified and (i) Causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103." 29 U.S.C. Sec. 104.

the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history.

It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and that it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the board rather than being handled by the voluntary methods provided for in the same act.

If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts [fol. 343] in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in *General Committee of Adjustments* vs. *M.K. & T.*, 320 U.S. 323, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts.

In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly necessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case.

Further, appellee's contention, which prevailed with the

district judge below and which it presses here, that the suit falls within the language of the LaGuardia Act making an exception to the grant of an injunction in situations where unlawful acts have been threatened and will be committed unless restrained, is wholly untenable. It is plain from the language and the context that the words "unlawful acts" means violence, breaches of the peace, criminal acts, etc., and that such terms do not include, they do not constitute [fol. 344] a general reference to, anything that may be considered illegal but apply specifically to the acts of violence which authority is calculated to control. *Wilson & Co.* v. *Birl and Carter* v. *Herrin, supra,* Cf. 43 C.J.S., 702 and cases cited.

The complaint did not allege that any such violence was threatened or feared, indeed it was carefully framed with the purpose and intent, if possible, to plead a case not within but without the Norris-LaGuardia Act. The statement of the district judge in Finding 33, with reference to the degree of damage depending on the destruction and violence of the strike, and in Finding 34, with reference to the carrier's being threatened with unlawful acts by the defendants which would result in damage to its property, did not constitute findings that physical violence had been threatened and would be committed, and, if they were intended to be such, they are without any support either in the pleadings or in the evidence. Neither was there allegation or supporting proof that police officers were unable or unwilling to furnish adequate protection.

In view of these conclusions, it is unnecessary for us to consider the points made by appellants that the carrier's own conduct in failing (1) to sincerely negotiate, (2) to apply for mediation, and (3) after mediation had begun to proceed with it, and (4) to exhaust its remedies before the Adjustment Board before resorting to suit, was such as to preclude it, under Section 108 of the Act, from seeking an injunction.

[fol. 345] Finally, because of our expressed views that this case is one arising under the Norris-LaGuardia Act and the district court was without jurisdiction to proceed in it, we do not reach the last question dealt with in appellants'

brief, whether the fault in respect of the Cheney Award was the carrier's rather than the employees'.

Appellee concedes that the basic and principal question on this appeal is whether or not the Norris-LaGuardia Act prohibits the district court in this case from taking jurisdiction and granting the pendente lite relief prayed. Conceding, too, that this is a case of first impression in any United States Court of Appeals, it urges upon us that the nature of the relief asked differentiates this case from all others and takes it out of the provisions of the Norris-LaGuardia Act, limiting the jurisdiction of the district court and directing its exercise. In emphasis of this argument, the appellee insists that it did not seek to have the dispute in question settled by the district court, that it sought merely to maintain the status quo pending the decision of the question by the Adjustment Board.

Assuming that this is a correct statement of its pleadings, and treating its argument as directed to the fact that the injunctive action granted was limited, we think it plain that this makes no difference. The decisive, the fundamental questions here are, was this a labor dispute and did the suit seek to prevent by injunction what the act denies the court the power to prevent, and the answers to the questions must be in the affirmative.

[fol. 346] The judgment is, therefore, reversed, and the cause is remanded with directions to dismiss the suit for want of jurisdiction.

BROWN, Circuit Judge, dissenting:

The Railroad, by complaint,[1] sought and the court

[1] The majority opinion states that the suit was for "(2) a judgment declaring the award final and binding and not subject to modification and change, * * *." With deference I do not so construe the record. In paragraph 30 of the complaint, the injunction sought is carefully restricted to "pending a determination of this controversy by the National Railroad Adjustment Board" and in the Prayer, that an injunction be issued restraining Brotherhood from "endeavoring to negotiate or * * * demanding a rule * * * prescribing extra compensation * * * for coupling and uncoupling air, steam or signal hose; * * * from calling a strike,

granted an injunction[2] against the threatened, imminent strike by the Brotherhood pending the determination by the Railway Adjustment Board of the question submitted to it by the Railway of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam and air hose, as claimed by the Railroad, or, as claimed by Brotherhood, was temporary

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work stoppage * * * directly or indirectly * * * because of * * * any feature of the controversy * * * described which has been referred to the National Railroad Adjustment Board * * * from endeavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney * * * until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act * * *." The Brotherhood's brief before us described the complaint and Prayer, (page 2) "It prayed for temporary restraining order, temporary injunction, and permanent injunction, enjoining a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling."

[2] The Decree carefully recites the purpose to be: "in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board, * * *:

"Pending further order * * * and * * * a final hearing * * * the [Brotherhood] and others * * * are * * * enjoined * * * from theatening to or from calling a strike, work stoppage, or picketing * * * or from using any similar device * * * against the * * * Railway Company, and from striking, stoppage of work, picketing * * * in an effort to or designed or intended:

"A. To compel [Railroad] to agree with [Brotherhood] to a cancellation, modification, change or revision of the * * * Cheney [Award] * * *; or

"B. To compel the [Railroad] to agree to or to consummate a rule * * * inconsistent with the Cheney Award * * *; or

"C. To compel [Railroad] to agree to or to consummate a contract * * * prescribing extra compensation * * * for

[fol. 347] in nature and open for negotiation.[3] No declaratory relief or interpretation of the Cheney Award was sought or obtained.

[fol. 348] At the outset, I am in complete agreement that, if the Norris-LaGuardia Act, 29 U.S.C.A. 101-115, applies, the Railroad has not met its terms and the injunction, even though limited, ought not to have been granted. Similarly, I concur that the mere fact that the strike involved some

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uncoupling air, steam * * * hose * * * inconsistent with the * * * Cheney Award.

* * * *

"This order is not to be construed as effecting any action of the [Brotherhood] in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute."

[3] The Cheney Award, seeking to resolve the provocative controversy raging since 1887 with the advent of the Westinghouse Air Brake, grew out of the impasse in the 1950 Railway-Brotherhood negotiations with its threat of a nationwide strike of all Class I Railroads with the devastating consequences to the nation's economy and security. The Mediation Board, under the Railway Labor Act, attempted unsuccessfully to produce agreement or persuade the parties to arbitrate. Under the Act, the President of the United States appointed an Emergency Board whose findings the Brotherhood declined to accept, requesting instead that the President take control of the Railroads. In December 1950, after extended Presidentially sponsored conferences, agreement was reached on all but a limited number of issues, then specified, including coupling of steam-air hoses. On May 25, 1951, all issues except two were settled, one being coupling air hoses, and on that date the parties agreed to submit the issues to a Presidentially appointed Referee, (George Cheney was named) "the decision of the Referee shall be final and binding on the parties, and shall become effective * * *."

On November 28, 1953, the Brotherhood, under 49 U.S.C.A. 156 made demand for contract changes, including pay increases for air-steam coupling. Threatened with

violation of law or is in breach of contract does not remove the controversy from the sweeping prohibition of that Act. *Wilson & Co.* v. *Birl*, 3 Cir., 105 F.2d 948; *East Texas Motor Freight Lines* v. *Teamsters*, 5 Cir., 163 F.2d 10; *Carter* v. *Herrin Motor Freight Lines*, 5 Cir., 131 F.2d 557; *Milk Wagon Drivers Union* v. *Lake Valley Farm Products*, 311 U.S. 91, 85 L.Ed. 63.

But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a "dispute[s] between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or [fol. 349] working conditions * * *", 45 U.S.C.A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the

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strike over the issue and mediation failing, the Railroad filed in the Georgia State Court a suit for declaratory judgment under the Cheney Award declaring it final and binding and seeking injunction to effectuate it. The Railroad asserted below that Brotherhood contended, and the Supreme Court of Georgia agreed, that the State "Court is without jurisdiction * * * and * * * the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively under Title 45, § 153(i) * * *." Central of Georgia Railway Co. v. Brotherhood of Railroad Trainmen, 85 S.E. 2d 413. Immediately, the Railroad submitted the controversy to the Railroad Adjustment Board. Then followed, in January and February 1955, the renewed demands for negotiation by the Brotherhood, the strike notices, efforts at mediation and submission to arbitration. The Railroad claimed, and the trial court found, that the Brotherhood was unwilling to allow the question of the extent, nature and effectiveness of the Cheney Award to be decided by the Railroad Adjustment Board and, a system-wide strike being imminent, an injunction was issued to permit it to be determined by the Adjustment Board.

National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, deliberate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, [fol. 350] they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.

In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. *Virginian Railway Co.* v.

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[1] 300 U.S. 515, 81 L.Ed. 789; injunction issued to require Railroad to bargain with Union certified by Mediation Board and not to bargain with another; notwithstanding that this controversy met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was

*System Federation*;[4] *Graham* v. *Brotherhood of Locomotive Firemen and Enginemen*.[5]

[fol. 351] Of course, the Railway Labor Act is not a voluntary free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court, by injunction, can compel the parties

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of a type forbidden by Section 104, the Supreme Court rejected it as a bar: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Of course, Section 2, Ninth, 45 U.S.C.A. 152, Ninth, does not, as such, authorize injunctions.

[4] 338 U.S. 232, 240, 94 L.Ed. 22; injunction affirmed against a union forbidding unlawful discrimination toward non-members. "The respondent [Brotherhood] has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * * But this is not a question of first impression. In Virginian R. Co. v. System Federation, 300 U.S. 515, 81 L.Ed. 789, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. §§ 151 et seq. * * *, enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act * * *. We adhere to the views expressed in the Virginian case. But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the Act, which as a whole

*der of Railway Conductors* v. *Pitney;*[6] *Elgin, Joliet & E. R. Co.* v. *Burley;*[7] *Brotherhood of R. Trainmen* v. to carry out and effectuate its aims, *Texas and New Orleans R. Co.* v. *Brotherhood*, 281 U.S. 548, 74 L.Ed. 1034; *Virginian Railroad Co.* v. *System Federation, supra*; *Or-*

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extends its protection solely to such disputes. * * * If, in spite of the Virginian, Steele, and Tunstall cases * * *, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. * * *."

This completely dissipates, I think, the force of the argument of the majority: "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided, * * *." Of course, its emphasis on the prohibition of *strikes*, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden.

[6] 326 U.S. 561, 90 L.Ed. 318; dispute over assignment of work on certain trains; one union contending that by virtue of a contract, not negotiated pursuant to Section 6, 45 U.S.C.A. 156, it was unlawfully given to another. Court recognizes that injunction can issue to compel compliance with the Act, including Section 6, but since question depends on the interpretation of the disputed contract, this was a matter for determination by the Adjustment Board. "Under these circumstances the Court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. * * * Only after the Adjustment Board acts, but not until then, will it plainly appear that such relief is necessary to secure compliance with the statute. * * *"

[7] 325 U.S. 711, 720, 721, 89 L.Ed. 1886, 1893; the court rejects the contention that an Adjustment Board award amounts to nothing more than an advisory opinion. "The contention, founded upon language of the opinion in Moore

[fol. 352] *Howard*,[7] including the resolution of disputes, grievances, and controversies through the administrative machinery of the Adjustment Board set up under the Act.[8] [fol. 353] The National Railway Labor Act is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an

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v. Illinois Central R. Co., 312 U. S. 630, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

"At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history. The *Moore* case involved no question concerning the validity or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. * * * both prior and later decisions here are wholly inconsistent with such a view of its effects * * * 12 * * *." Footnote 12 then states: "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. * * * [citing cases] This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. * * *; Brotherhood of R. Trainmen v. Toledo P. & W. R. Co., 321 U.S. 50, 88 L.Ed. 534, 538, * * *. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5 First (b), 6, 10."

[7] 343 U.S. 768, 96 L.Ed. 1283: "In fashioning its decree, the District Court is left free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that the disputed questions of reclassification of the craft of "train porters" are committed by the Railway Labor Act to the National Mediation Board."

[8] Rolfes v. Dwellingham, 8 Cir., 198 F. 2d 591; injunction issued in case involving allocation of work between com-

important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a Railroad to comply, *T. & N.O. R. Co.* v. *Brotherhood*, *Virginian R. Co.* v. *System Federation*, *supra*, so, too, may it compel obedience by unions, *Brotherhood of Trainmen* v. *Howard*, *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, *supra*.

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peting classification of employees, to remain in force pending determination by the National Railway Adjustment Board of the question of jurisdiction involved or for a reasonable time for the waiters to invoke the jurisdiction of the Board. Equitable relief was granted "in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act," * * * and "limited its injunction strictly to the purpose of affording opportunity for the administrative Board to function as contemplated by the Act. * * * The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce. * * * When the action was found to be wrongful and violative of the provisions of the Act, it was the duty of the court, and it properly acted, to restore the plaintiffs to their position before the wrongful action was taken against them." Court expressly states that *Graham*, *Virginian*, *Steele*, and *Tunstall* are "equally conclusive that the Norris-LaGuardia Act does not deprive the federal courts of power to issue such an injunction * * * in aid of the administrative Board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by * * * the * * * Act."

M.K.T. R. Co. v. Brotherhood of Railway Clerks, 7 Cir., 188 F.2d 302: institution of suits by the Brotherhood to enforce awards on allocation of work between competing classifications enjoined, as awards illegal for want of notice.

M.K.T. R. Co. v. National Railroad Adjustment Board, N.D.Ill., 128 Fed.Supp. 331: injunction issued against Brotherhood and Board to forbid efforts to enforce conflicting, contradictory awards made without adequate notice

[fol. 354] It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, *Slocum* v. *Delaware L. & W. R. Co.*;[10] *Order of Railway Conductors of America* v. *Southern Rail-*

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pending a determination of all of the cases consolidated by further award of the Board.

Brotherhood of Railroad Trainmen v. Templeton, 8 Cir., 181 F.2d 527, cert. denied 95 L.Ed. 605, 643: injunction issued against Brotherhood to forbid enforcement of and practices under awards made without adequate notice on allocation of work between competing classifications.

Railway Employees Cooperative Association v. A. B. & C. Railroad Co., D.C.Ga., 22 Fed.Supp. 510: injunction issued against Railroad prohibiting interference with union selection of bargaining representative pending decision by Railway Labor Board machinery.

Cf. B. & N.O. R. Co. v. Chicago River & Indiana R. Co., 7 Cir., 170 F.2d 654, cert. denied 93 L.Ed. 1101; M.K.T. R. Co. v. Randolph, 8 Cir., 164 F.2d 4.

Union Premier Food Stores v. Retail Food C. & M. Union, 3 Cir., 98 F.2d 821, reversed as moot, 308 U.S. 536, 84 L.Ed. 445, presented substantially the same problem under the National Labor Relations Act; injunction was issued against a strike where, in a representation controversy, the employer was neutral and the matter was then awaiting decision by the National Labor Relations Board.

[10] 339 U.S. 239, 94 L.Ed. 795; referring to the Act's purpose to avoid interruption to Commerce, 45 U.S.C.A. 151a, Court stated: "* * * This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. [cites *Elgin* case supra] The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. [cites *Virginian*, supra] The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes to be invoked if ne-

*way Co.*, 339 U.S. 255, 94 L.Ed. 811, once that procedure has been invoked by one of the parties.[11]

The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

[fol. 355] No matter how informal the proceedings might be, or how unlikely lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or, more likely make altogether unnecessary or futile the operation of this machine.

A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision

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gotiations fail. * * * It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreement between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board * * *. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

[11] Elgin, Joliet & E. R. Co. v. Burley, 325 U.S. 711, 727, 89 L.Ed. 1886, 1896, "Each party to the dispute may submit it for decision, whether or not the other is willing * * *."

of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic [fol. 356] forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies.

A real, genuine, spirited disagreement exists as to the meaning, application and effect of the Cheney Award—whether, as claimed by Railroad, it solved the air coupling problem forever, or, as contended by Brotherhood, foreclosed it only during the life of the 1950 contract of which the Cheney arbitration was a part, and, whether, in either case, it would prohibit efforts by the Brotherhood to secure changes in contracts concerning the future. If the Railroad is right, the Brotherhood should be held to the bargain made inducing the Cheney arbitration and award; if the Railroad is wrong, the Brotherhood should be free to negotiate with all the pressures and forces it can marshal.

That controversy is for determination by the machinery of the National Railway Labor Act. The decree permits the machine to work. It was right, in my judgment.
[fol. 357] I therefore respectively dissent.

[fol. 358] IN UNITED STATES COURT OF APPEALS

No. 15671

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE No. 721, ET AL.,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY

JUDGMENT—February 10, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions to dismiss the suit for want of jurisdiction;

It is further ordered and adjudged that the appellee, Central of Georgia Railway Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"BROWN, Circuit Judge, dissenting."

* * * * * *

[fols. 359-376] Petition for Rehearing and Opposition Thereto covering 20 pages filed omitted from this print. It was denied, and nothing more by order.

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[fols. 377-381] [Title omitted]

ORDER DENYING REHEARING—April 2, 1956

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.
"BROWN, Circuit Judge, dissenting."

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[fol. 382] Clerk's Certificate to foregoing Transcript omitted in printing.

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[fol. 383] Supreme Court of the United States

Order Allowing Certiorari—Filed October 15, 1956

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MAY 11 1956

IN THE

# Supreme Court of the United States

OCTOBER TERM 1955

No. [redacted] 84

CENTRAL OF GEORGIA RAILWAY COMPANY,
*Petitioner,*

vs.

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE NO. 721, ET AL.
*Respondents.*

## Petition of Central of Georgia Railway Company for Writ of Certiorari to United States Court of Appeals, Fifth Circuit

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May 10, 1956

## INDEX


Page

Opinions rendered in the Courts below ..... 1

Grounds for invoking jurisdiction of this Court .... 2

Questions presented for review ..... 3

Federal statutes involved ..... 4

Statement of the case ..... 7

Argument ..... 10

Conflicting decisions of the 5th and 7th Circuit Courts ..... 11

The 5th Circuit Court of Appeals in its opinion has decided an important question of Federal law which has not up to now been directly or expressly decided by the Supreme Court. Its importance is such that it should be settled by this Court ..... 14

The 5th Circuit Court through its opinion has decided a Federal question in a manner which conflicts with analogous decisions of the Supreme Court of the United States ..... 17

Opinion of the Fifth Circuit Court in the case at bar ..... Appendix "A"

Judgment of the Fifth Circuit Court .... Appendix "B"

## CASES CITED


| | Page |
|---|---|
| Brotherhood of RR Trainmen v. Howard, 343 U.S. 768 | 21 |
| Chicago River & Indiana RR Co. v. Brotherhood of RR Trainmen et al., 229 Fed(2d) 926 | 3, 11 |
| Cook County Natl. Bank v. United States, 107 U.S. 445 | 27 |
| Elgin, Joliet & Erie Ry. Co. v. Burley, 325 U.S. 711 | 23 |
| Graham v. Brotherhood of Locomotive Firemen and Enginemen, 338 U.S. 232 | 19 |
| Order of Railway Conductors v. Pitney, 326 U.S. 561 | 22 |
| Order of Railway Conductors v. Southern Ry., 339 U.S. 255 | 26 |
| Slocum v. Delaware, Lackawanna & Western RR Co., 339 U.S. 239 | 25 |
| Texas & New Orleans RR Co. v. Brotherhood of Railway and Steamship Clerks, 281 U.S. 548 | 20 |
| Virginian Ry. Co. v. System Federation, 300 U.S. 515 | 18 |


## STATUTES CITED


| | |
|---|---|
| Jurisdiction—28 U.S.C.A., Sections 1254, 1331, 1337 | 2, 7 |
| Norris-LaGuardia Act, 29 U.S.C.A. 101 | 3, 6 |
| Railway Labor Act, 45 U.S.C.A. Sections 151 et seq. | 3, 5, 7 |

IN THE

# Supreme Court of the United States

OCTOBER TERM 1955

No.....

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CENTRAL OF GEORGIA RAILWAY COMPANY,
*Petitioner,*

vs.

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE NO. 721, ET AL.
*Respondents.*

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## Petition for Writ of Certiorari

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TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

COMES NOW, Central of Georgia Railway Company (hereinafter referred to sometimes as "Central" or "Petitioner") and presents this its petition for Writ of Certiorari to be directed to the United States Court of Appeals for the Fifth Circuit, Petitioner respectfully showing:

### Opinions Delivered in the Courts Below

In the case of Central of Georgia Railway Company vs. Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al, Civil Action No. 797, in the United States District Court for the Southern District

of Georgia, the Court handed down its findings of fact, conclusions of law and preliminary injunction on March 10, 1955. This opinion was not reported, but can be found in the printed transcript in this case beginning at page 281. In addition to the one certified copy, nine additional copies of the printed record in the Court below are being filed with this petition.

The Brotherhood of Railroad Trainmen, et al., appealed and in the case of Brotherhood of Railroad Trainmen; Local Lodge No. 721, et al., Appellants vs. Central of Georgia Railway Company, Appellee, Case No. 15671, the United States Court of Appeals for the Fifth Circuit rendered an opinion on February 10, 1956, Judge Brown dissenting, reversing the District Court. (Rehearing denied without opinion April 2, 1956). We have no knowledge that the opinion has up to now been reported, but it is set forth in full in Appendix "A" hereof.

## Grounds for Invoking Jurisdiction of This Court

The judgment sought to be reversed in this petition for certiorari was dated and entered on February 10, 1956 and rehearing denied April 2, 1956.

By order dated April 11, 1956, mandate was stayed until May 11, 1956.

It is respectfully submitted that the jurisdiction to review the judgment of the Court of Appeals for the Fifth Circuit in this case is conferred on this Court by Title 28, U.S.C., Section 1254 (62 Stat. 928) and acknowledged by Rule 19 of the Supreme Court Rules. It is the contention of Central of Georgia as Petitioner that:

(1) The opinion sought to be reviewed is in direct conflict with the decision of the Court of Appeals for the Seventh Circuit decided on February 6, 1956 in the case of Chicago River and Indiana Railroad Company et al. vs. Brotherhood of R.R. Trainmen, et al. Case No. 11474 reported in 229 Fed(2) 926.

(2) The opinion sought to be reviewed decided an important Federal question which has not been but should be specifically settled by this court.

(3) The opinion sought to be reviewed is in conflict with analogous and therefore applicable decisions of this Court.

## Questions Presented for Review

The question presented for review is whether or not the Norris-LaGuardia Act[1] deprives the United States District Court of jurisdiction to enjoin a strike threatened by the Brotherhood of Railroad Trainmen over a dispute, pending the settlement of that very dispute by the National Railroad Adjustment Board, to which board the dispute has been properly submitted for decision pursuant to the Railway Labor Act.[2]

There were several other ancillary questions before the Court of Appeals but they were not decided in view of that Court's opinion that the Norris-LaGuardia Act was controlling and denied jurisdiction to the District Court.

The question was raised in this manner:

The District Court, after hearing on motion for preliminary injunction, found that the Railroad

[1] 29 U.S.C.A. 101 et seq.
[2] 45 U.S.C.A. Sec. 151 et seq.

Brotherhood, a duly authorized bargaining representative under and subject to the Railway Labor Act, was threatening to call a strike on the Central of Georgia Railway Company, a common carrier by rail subject to the Railway Labor Act. That such threatened strike grew out of a dispute over which the National Railroad Adjustment Board had primary exclusive jurisdiction and that such dispute had been submitted to that Board and was then pending before that Board for decision. The District Court granted the preliminary injunction to preserve the status quo pending a decision of the very dispute by the National Railroad Adjustment Board then and now existing and pending further order of the Court. Appeal was taken therefrom by the Brotherhood of Railroad Trainmen. The Court of Appeals, by a split decision, reversed the District Court holding that the Norris-LaGuardia Act was controlling and that the District Court had violated the Norris-LaGuardia Act, there being "no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two Acts either apart from, or in connection with their legislative history." (Rehearing denied by a split decision).

Thus it is that the Court of Appeals passed on only one single point.

## Federal Statutes Involved

This case involves the inter-relationship and inter-affects of the Norris-LaGuardia Act and the Railway Labor Act. The pertinent features of both acts are as follows:

(1) *Railway Labor Act*

Section 1a of the Railway Labor Act (Title 45 U.S.C.A., Section 151a) provides: "The general purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; *** (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Section 2 First of the Railway Labor Act (Title 45 U.S.C.A., Sec. 152 First) provides: "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Second, of the Railway Labor Act (Title 45 U.S.C.A., Sec. 152 Second) provides: "All disputes between a carrier or carriers, and its or their employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 3, First, (i) of the Railway Labor Act (Title 45 U.S.C.A., Sec. 153 First (i)) provides: "The

disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. ***, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

(2) *Norris-LaGuardia Act*

Section 1 "No Court of the United States, as defined in Sections 101-115 of this Title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy in such sections." (Title 29, U.S.C.A. Section 101, Section 1, 47 Stat. 70)

Section 4 "No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or

to remain in any relation of employment." (29 U.S.C. Sec. 104, Sec. 4, 47 Stat. 70).

Section 13 "When used in Sections 101-115 of this Title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)." (Title 29 U.S.C. Sec. 113, Sec. 13, 47 Stat. 73).

## STATEMENT OF THE CASE.

The District Court has jurisdiction over this complaint because it arises under the laws of the United States and the matter in controversy exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs (Title 28 U.S.C. Sec. 1331); also because the complaint arises under an Act of Congress regulating commerce (Title 28 U.S.C. Sec. 1337). Said laws of the United States and said Act of Congress regulating commerce are found in the Railway Labor Act, Title 45 U.S.C. Sec. 151 et seq.

The Central of Georgia Railway Company, by complaint, sought and the Court granted an injunction against the threatened, imminent strike by the Brotherhood of Railroad Trainmen and their craft pending the determination by the National Railroad Adjustment Board of the question submitted to it by the Central of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam, signal and air hose, as claimed by the Railroad, or, as claimed by the Brotherhood, was temporary in nature and open for negotiation. No declaratory relief or interpretation of the Cheney Award was sought or obtained. It is interesting to note that the Brotherhood in this same dispute had prevailed in the State Court on the proposition that the National Railroad Adjustment Board had exclusive jurisdiction over this dispute. The relief sought in the complaint basically was a preservation of the status quo pendente lite, that is, merely pending the decision of the National Railroad Adjustment Board. The relief sought was a protection by a court of equity of orderly administrative procedure under the Railway Labor Act. As the Court of Appeals decision was based solely on a jurisdictional point, both the nature and the merits of the "hose coupling dispute" are not in issue. Therefore, insofar as this application for Certiorari is concerned, it must be taken as granted that the dispute is properly before the National Railroad Adjustment Board and within that Board's exclusive original jurisdiction. The present dispute arose as follows:

On November 28, 1953 The Brotherhood of Railroad Trainmen served notice on the Central of Georgia

Railway for a change in contract terms providing an arbitrary of $1.50 per day or trip for foremen and switchmen employed in yards and trainmen employed on switch local assignments and/or local freight assignments upon condition that said employees "may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains." The Central took the position that in a 1951 arbitration award known as the Cheney Award it had been decided between the parties that such duties were a part of the basic duties of the trainmen and therefore as the Cheney Award had been made a part of the collective bargaining contract, such request for a change was contrary to the terms of the existing contract. This dispute was unsuccessfully negotiated and mediated. It was taken into the State Courts and at the instance of the Brotherhood the State Courts held that the dispute was a matter for the original primary jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act. Thereupon the Central submitted the identical controversy to the National Railroad Adjustment Board for a decision. After requesting and obtaining additional time within which to answer the submission to the National Railroad Adjustment Board, the Brotherhood called a strike for February 18, 1955. The dispute was again negotiated and mediated. Thereupon the Central filed the complaint in the United States District Court for the Southern District of Georgia, and, as described by Judge Brown's dissenting opinion:

> "***here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of a threatened strike was a violation of the contract, but rather

because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a 'dispute(s) between an employee or group of employees and a carrier *** growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions***', 45 U.S.C.A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved."

## ARGUMENT.

The grounds of this petition for Writ of Certiorari are as follows:

(1) There exists conflicting decisions of the United States Court of Appeals for the Fifth and Seventh Circuits on the principal point at issue in this case.

(2) The opinion of the United States Court of Appeals for the Fifth Circuit in this case has decided an important question of Federal Law which has not been directly and expressly decided by the Supreme Court of the United States, and the question is of

such importance that it should be settled by the Supreme Court of the United States.

(3) The opinion of the United States Court of Appeals for the Fifth Circuit in this case has decided a federal question in a way in conflict with analogous and applicable decisions of the Supreme Court of the United States.

The above grounds will be argued in order.

**Conflicting Decisions of the United States Court of Appeals for the Fifth and Seventh Circuits.**

On February 6, 1956, the United States Court of Appeals for the Seventh Circuit handed down its decision in the Chicago River and Indiana Railroad Company, et al., Appellants v. Brotherhood of Railroad Trainmen, et al., Appellees, No. 11474. Reported in 229 Fed. (2) 926.

In the Chicago River Case the Railway sought an injunction to restrain the Brotherhood of Railroad Trainmen (the same labor organization which is an appellant herein) from calling a threatened strike over 21 grievances and claims which the railroad had submitted to, and which were pending before, the National Railroad Adjustment Board for decision. The District Court had dismissed the cause believing that the Norris-LaGuardia Act prohibited jurisdiction over the matter, following the line of reasoning followed by the Fifth Circuit in our case. The Trainmen in the Chicago River case argued that the Court did not have the power to grant an order restraining a strike "because no provision of the Railway Labor Act prohibits a strike over grievances." The Circuit Court, citing authorities, held:

> "We, therefore, hold that the District Court has jurisdiction to issue an injunction restraining the Trainmen from striking over grievances and claims, unless the Norris-LaGuardia Act prevents or limits the Court's power to do so."

In finding that the Norris-LaGuardia Act did not infringe upon the administrative procedures of the Railway Labor Act, the Court held:

> "The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention in that Act to the effect that the Norris-LaGuardia Act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia Act does not apply to the case at bar."

One could not find a clearer case where there are conflicting opinions of two of the Circuit Courts of Appeal on the identical question. Both the Chicago River case and the present case involve a situation where the Brotherhood of Railroad Trainmen refused to permit the dispute at issue to be settled through the orderly procedure of the Railway Labor Act by the Railroad Adjustment Board. Instead, in each case, the Brotherhood of Railroad Trainmen sought to enforce their views by strike at the time that the dispute at issue was pending for settlement before the National Railroad Adjustment Board. The Seventh Circuit held that a Federal Court had the jurisdiction to enforce the obvious mandates of the Railway Labor Act and to protect orderly procedure under that act, whereas, the Fifth Circuit found that the Norris-LaGuardia Act deprived Federal Courts of the jurisdiction of protecting orderly procedure under the Railway Labor Act. The dissenting opinion of Judge Brown in the

Fifth Circuit, with cogent reasoning, reaches the same conclusions as did the Seventh Circuit, to wit:

> "Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.
>
> "This approach, substantiated by abundant authorities, has special merit here.*** The enactment of the one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the Courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.
>
> "In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. Virginian Railway Company vs. System Federation: Graham v. Brotherhood of Locomotive Firemen and Enginemen."

Therefore, there is a clear and definite conflict between the decision of the Seventh Circuit and the decision in our case and there is a harmony with the decision of the Seventh Circuit in the dissenting opinion in our case.

**The Opinion of the United States Court of Appeals for the Fifth Circuit in This Case Has Decided an Important Question of Federal Law Which Has Not Been Directly and Expressly Decided by the Supreme Court of the United States and the Question is of Such Importance That It Should Be Settled by the Supreme Court of the United States.**

It is abundantly clear, without extended argument, that the question at issue is of grave importance to the welfare of our entire nation. Stating the question differently it is, whether or not the railroad brotherhoods will be permitted at their whim or fancy to disregard the orderly procedure of the Railway Labor Act, refuse to settle disputes in the manner provided by the act, and resort to the economic pressures of strikes. Is a Federal Court powerless because of the Norris-LaGuardia Act, in such a case, to protect and preserve the orderly procedure under the Railway Labor Act? If a Federal Court is so powerless as decided by the majority opinion in the Fifth Circuit, then the effectiveness of a major provision of the Railway Labor Act is completely nullified and destroyed.

Daily, literally hundreds of disputes are settled through the orderly machinery of the Railway Labor Act, involving the question of interpretation or application of provisions of existing labor agreements. If the parties cannot agree by negotiation between themselves, the dispute is submitted to the highest executive officer of the carrier involved for decision. If his decision is unsatisfactory to the Brotherhood, the Brotherhood can submit the dispute to the National Railroad Adjustment Board for decision. Likewise, if the railroad would like to have the matter decided

it may submit the dispute to the National Railroad Adjustment Board. This procedure has been held to be mandatory and neither party can resort to "self help" pending a decision by the Adjustment Board.

If the decision of the Fifth Circuit in our case is permitted to stand, the policy of the National Railway Labor Act will be defeated. The Fifth Circuit opinion in our case completely undermines the foundations of the settlement procedure provided by the Railway Labor Act.

As was stated by Judge Brown in his dissenting opinion:

> "The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.
>
> "No matter how informal the proceedings might be, or how unlike lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures in forces, economic or otherwise, which will interfere with or interrupt or, more likely make altogether unnecessary or futile the operation of this machine.

"A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the Union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the old procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

"This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act, or the elemental rights which seem to inhere in the right to strike. A Court of Equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controveries determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in a good faith exhaust,

this satutory machinery for the determination of these controversies."

**The Opinion of the United States Court of Appeals for the Fifth Circuit in This Case Has Decided a Federal Question in Conflict with Analogous and Thus Applicable Decisions of the Supreme Court of the United States.**

The majority opinion of the Fifth Circuit concluded that the Norris-LaGuardia Act must be construed as depriving a Federal District Court of its jurisdiction to grant equitable relief to protect the orderly settlement of a dispute by the National Railroad Adjustment Board under the Railway Labor Act. The majority concluded that the resort to the National Railroad Adjustment Board for the settlement of disputes within its jurisdiction under the Railway Labor Act was not mandatory but purely permissive, stating "none of the sections mandatorily provide that disputes must be submitted to the Board rather than being handled by the voluntary methods provided for in the same Act." The majority opinion felt bound to apply the Norris-LaGuardia Act further because "there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history."

The very clear dissenting opinion of Judge Brown in the Fifth Circuit ably shows how the foregoing conclusions are in conflict with opinions of the Supreme

Court of the United States, Judge Brown stating (R. 350):

> "*** Federal Courts have never been shackled by Norris-LaGuardia Act in giving life and force to the mandates of the Railway Labor Act. Virginian Railway Company v. System Federation; Graham v. Brotherhood of Locomotive Firemen and Enginemen, supra.
>
> "Of course, the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court by injunction, can compel the parties to carry out and effectuate its aims. Texas and New Orleans Railroad Company v. Brotherhood, 281 U.S. 548, Virginian Railroad Company v. System Federation, supra; Order of Railway Conductors v. Pitney; Elgin, Joliet and Erie Railway Company v. Burley; Brotherhood of Railroad Trainmen v. Howard."

At this point we discuss the Supreme Court's decisions referred to above in the quotation from Judge Brown's dissent:

*Virginian Railway Company v. System Federation*, 300 U.S. 515, 81 Law Ed. 789, 57 Sup. Ct. 592 (1937). In this case an injunction issued at the instance of the railroad union to require the railroad to recognize it and to bargain with the union as certified by the Mediation Board and not to bargain with any other union. It is clear that this dispute met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104. The Supreme Court rejected the Norris-LaGuardia Act as a bar, stating:

"The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders."

* * * * *

"It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of Section 2, 9th, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

Thus it is clear that in the Virginian case the United States Supreme Court did not agree with the majority opinion in the instant case that there must be expressed language in the Railway Labor Act overriding the Norris-LaGuardia Act.

*Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U.S. 232, 94 L.Ed. 22, 70 Sup. Ct. 14 (1949). This was an action by negro firemen. An injunction issued and was affirmed against a union forbidding unlawful discrimination toward non-members. The court stated:

"The respondent (Brotherhood) has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act *** the District Court was without jurisdiction to grant relief by injunction. *** But this is not a question of first impression. In Virginian Rail. R. Co. v. System Federation, 300 U.S. 515, we held that the Norris-LaGuardia Act did not deprive Federal Courts of jurisdiction to compel

> compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. Sec. 151 et seq., enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. ***. We adhere to the views expressed in the Virginian case. But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts.*** We do not accept the Brotherhood's invitation to narrow the meaning of that term. *** Moreover, if this court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the act, which, as a whole extends its protection solely to such disputes. *** If, in spite of the Virginian, Steele, and Tunstall cases ***, there remains any illusion that under the Norris-LaGuardia Act the Federal Courts are powerless to enforce these rights, we dispel it now.***."

As Judge Brown said, the foregoing quotation from the Graham case completely refutes the argument of the majority that had Congress intended for the Railway Labor Act to modify the Norris-LaGuardia Act, Congress would have expressly so provided. As Judge Brown also stated, "Of course, its (the majority opinion) emphasis on the prohibition of *strikes*, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden."

In *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548, 74 L. Ed. 1034, this Court affirmed a decree

enjoining a railroad company from interfering with, influencing or co-ercing clerical employees of the company in the matter of their organization and designation of representatives for the purposes set forth in the Railway Labor Act. The Court stated (P-567):

> "It is thus apparent that Congress, in the legislation of 1926, while elaborating a plan for amicable adjustments and voluntary arbitration of disputes between common carriers and their employees, thought it necessary to impose, and did impose, certain definite obligations enforceible by judicial proceedings. *** While an affirmative declaration of duty contained in a legislative enactment may be of imperfect obligation because not enforcible in terms, a definite statutory prohibition of conduct which would thwart the declared purpose of the legislation cannot be disregarded. The intent of Congress is clear with respect to the sort of conduct that is prohibited.***"

*Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 96 L.Ed. 1283, 72 Sup. Ct. 1022 (1952). This was a negro discrimination case, the Court saying (P. 775):

> "In fashioning its decree, the District Court is left free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that *disputed* questions of reclassification of the craft of 'train porters' are committed by the Railway Labor Act to the National Mediation Board." The Court went on to say: "Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders (to enforce the Railway Labor Act) notwithstanding the provisions of the Norris-LaGuardia Act."

The foregoing cases make it clear that the Courts will enforce the obligations set forth in the Railway Labor Act, notwithstanding the Norris-LaGuardia Act. Equally clear it is from the following cases that the Supreme Court of the United States has held that where one party has submitted a controversy to the National Railroad Adjustment Board, it is the obligation of the other party to await the outcome of that decision:

*Order of Railway Conductors v. Pitney*, 326 U.S. 561, 90 L.Ed. 318, 66 Sup. Ct. 322 (1946). This case and Slocum both held that the word "may" is mandatory and that submission of dispute to the National Railroad Adjustment Board is mandatory if either party is dissatisfied with the settlement. This involved a dispute over the assignment of work on certain trains. The employees brought suit to enjoin the railroad trustee from displacing the plaintiffs. One union contended that by virtue of a contract, not negotiated pursuant to Section 6, 45 U.S.C.A. 156, the work was unlawfully given to another union. The Court recognized that injunction could issue to compel compliance with the Act, including section 6, but since the question depends on the interpretation of the disputed contract, this was a matter for determination by the National Railroad Adjustment Board. This Court stated (P. 567):

> "Under these circumstances the Court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then ***. Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is

necessary to insure compliance with the statute."

At another point the Court said:

> "But the Court should not have interpreted the contracts for purposes of finally adjudicating the dispute between the unions and the railroad. The dismissal of the cause should, therefore, be stayed by the District Court, so as to give an opportunity for application to the Adjustment Board for an interpretation of the agreements."

In the Pitney case the Court recognized the necessity for the status quo pending a decision of the controversy by the National Railroad Adjustment Board.

*Elgin, Joliet and Erie Railway Company v. Burley*, 325 U.S. 711, 89 L.Ed. 1886, 65 Sup. Ct. 1282 (1945). Employees raised the issue of whether the union held authority under the Railway Labor Act to carry their claims to the Adjustment Board. The court, in rejecting the contention that an Adjustment Board award amounts to nothing more than advisory opinion, had this to say, speaking through Justice Rutledge (P. 720):

> "The contention, founded upon the language of the opinion in Moore v. Illinois Central Railway Company, 312 U.S. 630, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.
>
> "At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history. The Moore case involved no question concerning the validity

or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. *** both prior and later decisions here are wholly inconsistent with such a view of its effects ***12***."

Footnote 12 then states:

"Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement.*** (citing cases) This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. ***; Trainmen v. Toledo P.&W. R. Co., 321 U.S. 50, 88 L.Ed. 534, 538.***. At successive stages of the statutory procedure other duties are imposed. Cf. Secs. 5 First (b), 6, 10."

* * * * *

"Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. (1934 Railway Labor Act). The sponsor in the House insisted that Congress act upon them before adjournment for fear if no action were taken a railroad crisis might take place. The old Mediation Board was helpless. To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board the Adjustment Board was created and given power to decide them. *** The Act purports to make the Board's decisions 'final and binding.' Section 3 First (m). *** The aim (of the Act) was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private

interests against the harmful effects of the pre-existing scheme."

Justice Rutledge in discussing the "major and minor" disputes, said as to major disputes, the statutory scheme retains throughout a voluntary mode of settlement; and that "no authority is empowered to decide the dispute." However, the course for settling grievances is entirely different beyond their initial stages! "Thereafter the act does not leave the parties wholly free, at their own will to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement."

In the dissenting opinion in the Burley case it was said (P. 154):

> "The purpose of this legislation is the exertion of maximum pressure toward amicable settlement between the parties. Resort to the Adjustment Board is the last step in the statutory process."

Another case also cited by Judge Brown, is *Slocum v. Delaware Lackawanna and Western Railroad Company*, 339 U.S. 239, 94 L.Ed. 795, 70 Sup. Ct. 577 (1950). There the Court held that the National Railroad Adjustment Board disputes procedure under the Railway Labor Act was mandatory before either party could resort to self help. This case involved a dispute between two unions over the scope of their respective agreements with the railroad. The Court referred to the Acts purpose to avoid interruptions to commerce. 45 U.S.C.A. 151a, stating (P. 242):

> "This purpose extends both to disputes concerning the making of collective agreements and

to grievances arising under existing agreements. (Cites the Elgin case, supra). The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. (Cites Virginian case, supra). The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes to be invoked if negotiations fail.*** It was to prevent such friction that the 1926 Act provided for creation of various adjustment boards by voluntary agreement between the carriers and workers.*** But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads passed an amendment which directly created a National Adjustment Board. *** The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements***".

Another case in point cited by Judge Brown is *Order of Railroad Conductors of America v. Southern Railway Company*, 339 U.S. 255, 94 L.Ed. 811. This was a dispute between certain conductors and the railroad concerning the railroad's obligations under a collective bargaining agreement to give conductors extra pay for certain services. Railroad refused to pay and thereafter sought a declaratory judgment in the State Court of South Carolina. This Court said at page 256 of its opinion:

"Sustaining the state court's action (that was a decision on the merits of the case) would invite races of diligence whenever a carrier or

> union preferred one forum to the other. And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by Section 3 First (i) of the Railway Labor Act***, 45 U.S.C.A. Sec. 153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board."

The analogous argument is that if either party could resort to self help, this would for practical purposes deprive the other of the privilege conferred by the Railway Labor Act.

The majority opinion in seeking an express provision of the Railway Labor Act which withdrew the application of the Norris-LaGuardia Act is also diametrically in conflict with the principle of statutory construction, enunciated by this Court in *Cook County National Bank v. United States*, 107 U.S. 445, 27 Law Ed. 537, 2 Sup. Ct. 561, in which it was stated:

> "A law embracing an entire subject, dealing with it in all of its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

WHEREFORE, Petitioner prays that a writ of certiorari be granted in this instance and that, after further and appropriate proceedings have been had, the judgment of the Court of Appeals be reversed and set aside. The lower Court's decision of February 10, 1956, rendered in the case at bar is directly in conflict with that of the 7th Circuit Court of February 6, 1956 in Brotherhood of Railroad Trainmen

et al v. Chicago River and Indiana RR Co., supra. Also, in its opinion sought to be reviewed, the Fifth Circuit Court has decided a Federal question in conflict with analogous and thus applicable decisions of the Supreme Court of the United States. In addition, the opinion herein complained of decided an important Federal question which is also of extreme importance to the railroad industry of our country and therefore, we believe this Court should unhesitatingly grant the writ prayed for.

This May 10, 1956.

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## Appendix "A"

IN THE

# United States Court of Appeals

FOR THE FIFTH CIRCUIT

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No. 15671

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BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,
Appellants,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY
Appellee.

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*Appeal from the United States District Court for the Southern District of Georgia.*

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(February 10, 1956.)

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Before HUTCHESON, Chief Judge, and BORAH and BROWN, Circuit Judges.

HUTCHESON, Chief Judge: Brought by their employer in the midst of a labor dispute, against the named defendants and the class of employees represented by them, the suit was for: (1) a temporary injunction restraining them pendente lite, from endeavoring by self help to effect a modification or change of an arbitration award known as the Cheney Award and from calling and putting into effect a strike because

of plaintiff's refusal to acquiesce in their demands; (2) a judgment declaring the award final and binding and not subject to modification and change; and (3) a final order making the injunction permanent.

The claim was: that, though in compliance with the decision of the Supreme Court of Georgia,[1] that it should do so, and pursuant to the Railway Labor Act, plaintiff had submitted the controversy between it and the defendants over the Cheney Award to the National Railroad Adjustment Board, the defendants had demanded that a modification of the award be negotiated and had given formal notice that a strike of the employees was being set subject to a satisfactory settlement; that the strike date was once postponed at the intervention of the National Mediation Board, but the mediator had advised plaintiff that his services were fruitless; that the defendants will not agree to leave the matter in status quo pending a decision of the controversy by the National Adjustment Board, and have called a system wide strike against plaintiff to coerce it to adopt defendants' interpretation of the award; and that if the strike becomes effective it will completely close down plaintiff's operations with resulting irreparable injury.

The defendants filed a motion to dismiss[2] for want of jurisdiction on the ground, among others, that the

[1] Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 85 SE(2) 413.

[2] "Now comes the Brotherhood of Railroad Trainmen, et al, defendants in the above entitled cause, and moves the court as follows:

"1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

"2. To dismiss the action because the petition shows on its

petition shows on its face that plaintiff is seeking an injunction in the face of, and contrary to, the Norris LaGuardia Act, Secs. 101-115, Title 29.

This motion denied and a hearing had, the district judge concluding: that the Norris LaGuardia Act was not intended by Congress to deprive a district court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Adjustment Board; and that it was necessary to preserve the status of the controversy now before the Board; granted the preliminary injunction as prayed, enjoining defendants from striking, work stoppage, picketing, or any similar device.

Appealing from the order denying its motion to dismiss, for want of jurisdiction, and the order granting the injunction, appellants, presenting four questions[3]

face that the Court is without jurisdiction of the subject matter.

"3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

"4. The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris LaGuardia Act, Title 29, Sections 101-115 and seeks no other relief."

[3] These are:

"First. Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second. Did the railway carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

"Third. Is a demand for a change in rates of pay, rules or working conditions, pursuant to the Railway Labor Act, Sec. 6, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth. Did the arbitration award in question conclude and thus prevent negotiation of the demand given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

for our decision, thus summarize their principal argument for reversal:

> "In both the overruling of the motion to dismiss the carrier's complaint and in issuing the temporary injunction against the Brotherhood defendants, the trial court violated the Norris-LaGuardia Act. These violations were numerous, repeated and substantial. Duty and candor compel us to say they were also flagrant. Any one of those violations controls and should alone decide the case. Therefore, we shall treat this feature first, before taking up the additional reasons for reversal."

> "The policy of the Act as set forth in Section 102 prevades all of its provisions. It was passed primarily to protect labor, not management. By doing so, it was hoped that all industry, labor and management, would be benefited ultimately and thus that the Act would be in the public interest."

We agree with the appellants that this is so. In the Carter case, 131 F(2) 557 where the suit was for an injunction, the court upheld the injunction as to those acts which dealt with such violations as trespassing, injuring property, intimidating, or threatening customers, molesting, assaulting, or intimidating employees, but reversed the injunction in respect of all matters which could be construed as prohibiting acts which the statute allows. Saying:

> "The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the

> persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means of advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike, that labor disputes as such are not at all reprobated but encouraged, and only violence in connection with them is forbidden . . ."

the court went on to hold that the use of injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process.

In the face of the imperative language of the section,[4] appellee's contention, that the act is not applicable because what was sought to be enjoined was action in breach of a contract embodied in the Cheney Award, is wholly untenable. The same contention has

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[4] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment; *** (d) Aiding any persons involved in any labor dispute; (e) Giving publicity of any labor dispute; (f) Assembling to promote their interests; (g) Advising as to any of the acts heretofore specified; and (h) Agreeing with others to do or not to do any of the acts heretofore specified and (i) Causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103." 29 U.S.C. Sec. 104.

been rejected in case after case holding that the statute requires a contrary ruling.

Nor may appellee find better support for the injunction in its claim that the purpose of the strike and its effect would be to do violence to statutory procedures embodied in the statute for a disposition of controversies by the Railroad Adjustment Board. For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limitation upon the prohibitions of the statute. Cf. *Wilson & Co. v. Birl*, 105 F(2) 948, and *East Texas Motor Freight Lines v. Teamsters*, 163 F(2) 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited to enlarge Federal Court jurisdiction as limited by the act. Cf. also *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, and 43 C.J.S., 748 and 29 A.L.R.(2) 360.

In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellee's position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the La-Guardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the

two acts either apart from, or in connection with their legislative history.

It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and that it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the board rather than being handled by the voluntary methods provided for in the same act.

If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in *General Committee of Adjustments vs. M.K. & T.*, 320 U.S. 323, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts.

In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act,

denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly necessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case.

Further, appellee's contention, which prevailed with the district judge below and which it presses here, that the suit falls within the language of the LaGuardia Act making an exception to the grant of an injunction in situations where unlawful acts have been threatened and will be committed unless restrained, is wholly untenable. It is plain from the language and the context that the words "unlawful acts" means violence, breaches of the peace, criminal acts, etc., and that such terms do not include, they do not constitute a general reference to, anything that may be considered illegal but apply specifically to the acts of violence which authority is calculated to control. *Wilson & Co. v. Birl and Carter v. Herrin, supra.* Cf. 43 C.J.S., 702 and cases cited.

The complaint did not allege that any such violence was threatened or feared, indeed it was carefully framed with the purpose and intent, if possible, to plead a case not within but without the Norris-LaGuardia Act. The statement of the district judge in Finding 33, with reference to the degree of damage depending on the destruction and violence of the strike, and in Finding 34, with reference to the carrier's being threatened with unlawful acts by the defendants which would result in damage to its property, did not constitute find-

ings that physical violence had been threatened and would be committed, and, if they were intended to be such, they are without any support either in the pleadings or in the evidence. Neither was there allegation or supporting proof that police officers were unable or unwilling to furnish adequate protection.

In view of these conclusions, it is unnecessary for us to consider the points made by appellants that the carrier's own conduct in failing (1) to sincerely negotiate, (2) to apply for mediation, and (3) after mediation had begun to proceed with it, and (4) to exhaust its remedies before the Adjustment Board before resorting to suit, was such as to preclude it, under Section 108 of the Act, from seeking an injunction.

Finally, because of our expressed views that this case is one arising under the Norris-LaGuardia Act and the district court was without jurisdiction to proceed in it, we do not reach the last question dealt with in appellants' brief, whether the fault in respect of the Cheney Award was the carrier's rather than the employees'.

Appellee concedes that the basic and principal question on this appeal is whether or not the Norris-LaGuardia Act prohibits the district court in this case from taking jurisdiction and granting the pendente lite relief prayed. Conceding, too, that this is a case of first impression in any United States Court of Appeals, it urges upon us that the nature of the relief asked differentiates this case from all others and takes it out of the provisions of the Norris-LaGuardia Act, limiting the jurisdiction of the district court and directing its exercise. In emphasis of this argument, the appellee insists that it did not seek to have the dispute in ques-

tion settled by the district court, that it sought merely to maintain the status quo pending the decision of the question by the Adjustment Board.

Assuming that this is a correct statement of its pleadings, and treating its argument as directed to the fact that the injunctive action granted was limited, we think it plain that this makes no difference. The decisive, the fundamental questions here are, was this a labor dispute and did the suit seek to prevent by injunction what the act denies the court the power to prevent, and the answers to the questions must be in the affirmative.

The judgment is, therefore, **REVERSED**, and the cause is **REMANDED** with directions to dismiss the suit for want of jurisdiction.

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BROWN, Circuit Judge, dissenting:

The Railroad, by complaint,[1] sought and the court

[1] The majority opinion states that the suit was for "(2) a judgment declaring the award final and binding and not subject to modification and change, * * *." With deference I do not so construe the record. In paragrph 30 of the complaint, the injunction sought is carefully restricted to "pending a determination of this controversy by the National Railroad Adjustment Board" and in the Prayer, that an injunction be issued restraining Brotherhood from "endeavoring to negotiate or * * * demanding a rule * * * prescribing extra compensation * * * for coupling and uncoupling air, steam or signal hose; * * * from calling a strike, work stoppage * * * directly or indirectly * * * because of * * * any feature of the controversy * * * described which has been referred to the National Railroad Adjustment Board * * * from endeavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney * * * until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act * * *." The Brotherhood's brief before us described the complaint and

granted an injunction[2] against the threatened, imminent strike by the Brotherhood pending the determination by the Railway Adjustment Board of the question submitted to it by the Railway of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam and air hose, as claimed by the Railroad, or, as claimed by Brotherhood, was temporary in nature and open for negotiation.[3] No declaratory relief or interpretation of the Cheney Award was sought or obtained.

Prayer, (page 2) "It prayed for temporary restraining order, temporary injunction, and permanent injunction, enjoining a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling."

[2] The Decree carefully recites the purpose to be: "in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board, * * *;

"Pending further order * * * and * * * a final hearing * * * the [Brotherhood] and others * * * are * * * enjoined * * * from threatening to or from calling a strike, work stoppage, or picketing * * * or from using any similar device * * * against the * * * Railway Company, and from striking, stoppage of work, picketing * * * in an effort to or designed or intended:

"A. To compel [Railroad] to agree with [Brotherhood] to a cancellation, modification, change or revision of the * * * Cheney [Award] * * *; or

"B. To compel the [Railroad] to agree to or to consummate a rule * * * inconsistent with the Cheney Award * * *; or

"C. To compel [Railroad] to agree to or to consummate a contract * * * prescribing extra compensation * * * for uncoupling air, steam * * * hose * * * inconsistent with the * * * Cheney Award.

* * * *

"This order is not to be construed as effecting any action of the [Brotherhood] in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute."

[3] The Cheney Award, seeking to resolve the provocative controversy raging since 1887 with the advent of the Westinghouse Air Brake, grew out of the impasse in the 1950 Railway-Brotherhood negotiations with its threat of a nationwide strike of all

At the outset, I am in complete agreement that, if the Norris-LaGuardia Act, 29 U.S.C.A. 101-115, applies, the Railroad has not met its terms and the injunction, even though limited, ought not to have been granted. Similarly, I concur that the mere fact that the strike involved some violation of law or is in breach of contract does not remove the controversy from the

Class I Railroads with the devastating consequences to the nation's economy and security. The Mediation Board, under the Railway Labor Act, attempted unsuccessfully to produce agreement or persuade the parties to arbitrate. Under the Act, the President of the United States appointed an Emergency Board whose findings the Brotherhoods declined to accept, requesting instead that the President take control of the Railroads. In December 1950, after extended Presidentially sponsored conferences, agreement was reached on all but a limited number of issues, then specified, including coupling of steam-air hoses. On May 25, 1951, all issues except two were settled, one being coupling air hoses, and on that date the parties agreed to submit the issues to a Presidentially appointed Referee, (George Cheney was named) "the decision of the Referee shall be final and binding on the parties, and shall become effective * * *."

On November 28, 1953, the Brotherhood, under 49 U.S.C.A. 156 made demand for contract changes, including pay increases for air-steam coupling. Threatened with strike over the issue and mediation failing, the Railroad filed in the Georgia State Court a suit for declaratory judgment under the Cheney Award declaring it final and binding and seeking injunction to effectuate it. The Railroad asserted below that Brotherhood contended, and the Supreme Court of Georgia agreed, that the State "Court is without jurisdiction * * * and * * * the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively under Title 45, § 153(i) * * *." Central of Georgia Railway Co. v. Brotherhood of Railroad Trainmen, 85 S.E. 2d 413. Immediately, the Railroad submitted the controversy to the Railroad Adjustment Board. Then followed, in January and February 1955, the renewed demands for negotiation by the Brotherhood, the strike notices, efforts at mediation and submission to arbitration. The Railroad claimed, and the trial court found, that the Brotherhood was unwilling to allow the question of the extent, nature and effectiveness of the Cheney Award to be decided by the Railroad Adjustment Board and, a system-wide strike being imminent, an injunction was issued to permit it to be determined by the Adjustment Board.

sweeping prohibition of that Act. *Wilson & Co. v. Birl*, 3 Cir., 105 F.2d 948; *East Texas Motor Freight Lines v. Teamsters*, 5 Cir., 163 F.2d 10; *Carter v. Herrin Motor Freight Lines*, 5 Cir., 131 F.2d 557; *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, 85 L.Ed. 63.

But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a "dispute[s] between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *", 45 U.S.C.A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which

repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, delibierate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.

In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. *Virginian Railway Co. v. System Federation;*[4] *Graham v. Brotherhood of Locomotive Firemen and Enginemen.*[5]

[4] 300 U.S. 515, 81 L.Ed. 789; injunction issued to require Railroad to bargain with Union certified by Mediation Board and not to bargain with another; notwithstanding that this controversy met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104, the Supreme Court rejected it as a bar: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Of course, Section 2, Ninth, 45 U.S.C.A. 152, Ninth, does not, as such, authorize injunctions.

[5] 338 U.S. 232, 240, 94 L.Ed. 22; injunction affirmed against a union forbidding unlawful discrimination toward non-members.

Of course, the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court, by injunction, can compel the parties to carry out and effectuate its aims, *Texas and New Orleans R. Co. v. Brotherhood*, 281 U.S. 548, 74 L.Ed. 1034; *Virginian Railroad Co. v. System Federation, supra; Order of Railway Conductors v. Pit-*

"The respondent [Brotherhood] has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * * But this is not a question of first impression. In Virginian R. Co. v. System Federation, 300 U.S. 515, 81 L.Ed. 789, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. §§ 151 et seq, * * *, enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act * * *. We adhere to the views expressed in the Virginian case. But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the Act, which as a whole extends its protection solely to such disputes. * * * If, in spite of the Virginian, Steele, and Tunstall cases * * *, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. * * *."

This completely dissipates, I think, the force of the argument of the majority: "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided, * * *." Of course, its emphasis on the prohibition of **strikes**, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden.

*ney;*[6] *Elgin, Joliet & E. R. Co. v. Burley;*[7] *Brotherhood of R. Trainmen v. Howard,*[8] including the resolution of disputes, grievances, and controversies through

[6] 326 U.S. 561, 90 L.Ed. 318; dispute over assignment of work on certain trains; one union contending that by virtue of a contract, not negotiated pursuant to Section 6, 45 U.S.C.A. 156, it was unlawfully given to another. Court recognizes that injunction can issue to compel compliance with the Act, including Section 6, but since question depends on the interpretation of the disputed contract, this was a matter for determination by the Adjustment Board. "Under these circumstances the Court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. * * * Only after the Adjustment Board acts, but not until then, will it plainly appear that such relief is necessary to secure compliance with the statute. * * *"

[7] 325 U.S. 711, 720, 721, 89 L.Ed. 1886, 1893; the court rejects the contention that an Adjustment Board award amounts to nothing more than an advisory opinion. "The contention, founded upon language of the opinion in Moore v. Illinois Central R. Co., 312 U. S. 630, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

"At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history. The **Moore** case involved no question concerning the validity or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. * * * both prior and later decisions here are wholly inconsistent with such a view of its effects * * * 12 * * *." Footnote 12 then states: "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. * * * [citing cases] This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. * * *; Brotherhood of R. Trainmen v. Toledo P. & W. R. Co., 321 U.S. 50, 88 L.Ed. 534, 538. * * *. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5 First (b), 6, 10."

[8] 343 U.S. 768, 96 L.Ed. 1283; "In fashioning its decree the District Court is left free to consider what provisions are necessary to afford these employees full protection from future dis-

the administrative machinery of the Adjustment Board set up under the Act.[9]

criminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that the disputed questions of reclassification of the craft of "train porters" are committed by the Railway Labor Act to the National Mediation Board."

[9] Rolfes v. Dwellingham, 8 Cir., 198 F.2d 591: injunction issued in case involving allocation of work between competing classification of employees, to remain in force pending determination by the National Railway Adjustment Board of the question of jurisdiction involved or for a reasonable time for the waiters to invoke the jurisdiction of the Board. Equitable relief was granted "in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act," * * * and "limited its injunction strictly to the purpose of affording opportunity for the administrative Board to function as contemplated by the Act. * * * The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce. * * * When the action was found to be wrongful and violative of the provisions of the Act, it was the duty of the court, and it properly acted, to restore the plaintiffs to their position before the wrongful action was taken against them." Court expressly states that **Graham, Virginian, Steele,** and **Tunstall** are "equally conclusive that the Norris-LaGuardia Act does not deprive the federal courts of power to issue such an injunction * * * in aid of the administrative Board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by * * * the * * * Act."

M.K.T. R. Co. v. Brotherhood of Railway Clerks, 7 Cir., 188 F.2d 302: institution of suits by the Brotherhood to enforce awards on allocation of work between competing classifications enjoined, as awards illegal for want of notice.

M.K.T. R. Co. v. National Railroad Adjustment Board, N.D. Ill., 128 Fed. Supp. 331: injunction issued against Brotherhood and Board to forbid efforts to enforce conflicting, contradictory awards made without adequate notice pending a determination of all of the cases consolidated by further award of the Board.

Brotherhood of Railroad Trainmen v. Templeton, 8 Cir., 181 F.2d 527, cert. denied 95 L.Ed. 605, 643: injunction issued against Brotherhood to forbid enforcement of and practices under awards made without adequate notice on allocation of work between competing classifications.

Railway Employees Cooperative Association v. A. B. & C. Railroad Co., D.C.Ga., 22 Fed.Supp. 510: injunction issued

The National Railway Labor Act is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a Railroad to comply, *T. & N.O. R. Co. v. Brotherhood, Virginian R. Co. v. System Federation, supra,* so, too, may it compel obedience by unions, *Brotherhood of Trainmen v. Howard, Graham v. Brotherhood of Locomotive Firemen & Enginemen, supra.*

It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, *Slocum v. Delaware L. & W. R. Co.;*[10] *Order of Railway Conductors of America*

against Railroad prohibiting interference with union selection of bargaining representative pending decision by Railway Labor Board machinery.

Cf. B. & N.O. R. Co. v. Chicago River & Indiana R. Co., 7 Cir., 170 F.2d 654, cert. denied 93 L.Ed. 1101; M.K.T. R. Co. v. Randolph, 8 Cir., 164 F.2d 4.

Union Premier Food Stores v. Retail Food C. & M. Union, 3 Cir., 98 F.2d 821, reversed as moot, 308 U.S. 536, 84 L.Ed. 445, presented substantially the same problem under the National Labor Relations Act; injunction was issued against a strike where, in a representation controversy, the employer was neutral and the matter was then awaiting decision by the National Labor Relations Board.

[10] 339 U.S. 239, 94 L.Ed. 795; referring to the Act's purpose to avoid interruption to Commerce, 45 U.S.C.A. 151a, Court stated: "* * * This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. [cites **Elgin** case supra] The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. [cites **Virginian,** supra] The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes to be invoked if nego-

*v. Southern Railway Co.*, 339 U.S. 255, 94 L.Ed. 811, once that procedure has been invoked by one of the parties.[11]

The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

No matter how informal the proceedings might be, or how unlike lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or, more likely make altogether unnecessary or futile the operation of this machine.

---

tiations fail. * * * It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreement between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board * * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

[11] Elgin, Joliet & E. R. Co. v. Burley, 325 U.S. 711, 727, 89 L.Ed. 1886, 1896, "Each party to the dispute may submit it for decision, whether or not the other is willing * * *."

A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies.

A real, genuine, spirited disagreement exists as to the meaning, application and effect of the Cheney

Award—whether, as claimed by Railroad, it solved the air coupling problem forever, or, as contended by Brotherhood, foreclosed it only during the life of the 1950 contract of which the Cheney arbitration was a part, and, whether, in either case, it would prohibit efforts by the Brotherhood to secure changes in contracts concerning the future. If the Railroad is right, the Brotherhood should be held to the bargain made inducing the Cheney arbitration and award; if the Railroad is wrong, the Brotherhood should be free to negotiate with all the pressures and forces it can marshal.

That controversy is for determination by the machinery of the National Railway Labor Act. The decree permits the machine to work. It was right, in my judgment.

I therefore respectively dissent.

---

A True Copy:
Teste:

(Seal of the Court)

(Sgd.) John A. Feehan, Jr.
Clerk of the United States Court of
Appeals for the Fifth Circuit.

## Appendix "B"

## JUDGMENT.

**Extract from the Minutes of February 10, 1956.**

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**BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,**

**No. 15671. versus**

**CENTRAL OF GEORGIA RAILWAY COMPANY**

---

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to dismiss the suit for want of jurisdiction;

It is further ordered and adjudged that the appellee, Central of Georgia Railway Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Brown, Circuit Judge, dissenting."

* * * * * *

## CERTIFICATE OF SERVICE

I, JOHN B. MILLER, attorney for Central of Georgia Railway Company, Petitioner, do hereby certify that I have this day mailed with proper postage affixed a copy of the foregoing petition for certiorari to Benning M. Grice, Esquire, Counsel of record for Respondent, at his office address in Macon, Georgia.

This 10th day of May, 1956.

.....

JOHN B. MILLER

Office - Supreme Court, U. S.
FILED
JUN 8 1956
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

No. [redacted] 84

CENTRAL OF GEORGIA RAILWAY COMPANY
*Petitioner*

*v.*

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,

*Respondents*

BRIEF IN OPPOSITION TO PETITION OF CENTRAL OF GEORGIA RY. CO. FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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*Of Counsel for Respondents*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

**No. 935**

CENTRAL OF GEORGIA RAILWAY COMPANY
*Petitioner*

*v.*

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,

*Respondents*

BRIEF IN OPPOSITION TO PETITION OF CENTRAL OF GEORGIA RY. CO. FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

# INDEX


A. THE QUESTION PRESENTED

*Page*

FOR REVIEW ---------- 3

Federal Statutes Involved ---------- 4

B. STATEMENT OF THE CASE ---------- 2

C. ARGUMENT ---------- 8

1. Preliminary ---------- 8

2. The Fifth Circuit Court of Appeals Decision ---- 8

3. The Question Decided is Not in Conflict With Applicable Decisions of This Court ---------10

4. There is No Conflict Between the Fifth and Seventh Circuits Warranting Certiorari in This Case ----------13

5. The Question Presented is Not of Sufficient Importance As To Warrant the Writ of Certiorari ----------14

6. Petitioner's Cases ----------16

D. CONCLUSION ----------20

## Table of Authorities

### Cases

*Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 96 L.ed. 1293, 72 S.Ct. 1022 ..... 17

*Carter v. Herrin Motor Lines*, 131 F.2d. 557 ..... 9

*Chicago River and Indiana Railroad et al. v. Brotherhood of Railroad Trainmen*, 229 F.2d. 926 ..... 13

*Cook County National Bank v. United States*, 107 U.S. 445, 27 L.ed. 537, 2 S.Ct. 561 ..... 20

*Elgin, Joliet and Erie Ry. Co. v. Burley*, 325, U.S. 711, 89 L.ed. 1886, 65 S.Ct. 1282 ..... 13, 15, 18, 19

*General Committee of Adjustment v. Missouri-Kansas-Texas Ry. Co.*, 320 U.S. 323, 88 L.ed. 76, 64 S.Ct. 1282 ..... 10, 12, 15

*Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U.S. 232, 94 L.ed. 22, 70 S.Ct. 14 ..... 16, 17

*Mangum Import Co. v. Coty*, 262 U.S. 159, 67 L.ed. 531, 43 S.Ct. 587 ..... 8

*Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, 85 L.ed. 63, 61 S.Ct. 112 ..... 11

*Moore v. Illinois Central Ry Co.*, 312 U.S. 630, 85 L.ed. 1089, 61 S.Ct. 754 ..... 18

*Order of Railway Conductors of America v. Southern Railway Company*, 399 U.S. 255, 94 L.ed. 811, 70 S.Ct. 585 ..... 19

*Order of Railway Conductors v. Pitney*, 326 U.S. 561, 90 L.ed. 318, 66 S.Ct. 322 ..... 18, 19

*Slocum v. Del., Lakawanna & Western Railroad Co.*, 339 U.S. 239, 94 L.ed. 795, 70 S.Ct. 577 ----------19

*Steele v. L. & N. Ry. Co.*, 323 U.S. 192, 89 L.ed. 173, 65 S.Ct. 226 ----------17

*Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548, 74 L.ed. 1034 ----------17

*Virginian Ry. Co. v. System Federation No.* 40, 300 U.S. 515, 81 L.ed. 789, 57 S.Ct. 592 ----- ---------16, 17

*Washington Terminal Co. v. Boswell*, 124 F.2d. 235, 247 (Aff. 319 U.S. 732, 87 L.ed. 1694, 63 S.Ct. 1430) ----------15

## United States Code

Title 29, Sec. 101, et seq. ---------- 6

Sec. 101 ---------- 4

Sec. 102 ---------- 4

Sec. 104 ----------4, 11, 16, 17, 18

Sec. 109 ----------16

Sec. 113 ---------- 4

Title 45, Sec. 152 ----------16

## A. THE QUESTION PRESENTED FOR REVIEW

It is necessary for the respondents to call attention to certain inaccuracies in the petition.

The question, correctly stated, *is* whether or not the Railway Labor Act has expressly or impliedly repealed the provisions of the Norris-LaGuardia Act denying jurisdiction to federal courts to enjoin strikes.

It is *not*, as petitioner would pose, "whether or not the Norris-LaGuardia Act deprives the United States District Court of jurisdiction to enjoin a strike threatened by the Brotherhood of Railroad Trainmen over a dispute pending the settlement of that very dispute by the National Railroad Adjustment Board, to which Board the dispute has been properly submitted for decision pursuant to the Railway Labor Act."

Our statement of the question is, except for the addition of the word "federal" and the omission of the words "or work stoppages," identical with the Court of Appeals' statement of it.[1]

Likewise, petitioner's recital of the manner in which such question was raised is incorrect. This is particularly so as to the claims of the National Railroad Adjustment Board's jurisdiction; the nature and purpose of the injunction, and the characterization of the dispute as being the same as that before such Board. Petitioner's recital was merely what the District Court found and concluded, and is merely adopted as petitioner's contentions in this application for certiorari.

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1. The Court of Appeals phrases the question as folows: "In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly necessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case."

## Federal Statutes Involved

The recital of the federal statutes involved requires addition. Besides Norris-LaGuardia Act Sections 1, 4(a), and 13, we would include 2 (referred to in the Code as 102)[2] as to its purpose.

## B. STATEMENT OF THE CASE

Respondents cannot adopt petitioner's statement of the case set forth on pages 7-10 of the petition, because of its many inaccuracies, argumentative features and vital omissions. Respondents state the case as follows:

This is a railway labor case. The trial court enjoined a strike. The case was before the Court of Appeals because the trial judge (1) overruled a motion to dismiss, and (2) granted a preliminary injunction.

Both the complaint and injunction were directed against a strike on a railway carrier by certain of its employees represented by one of the national brotherhoods. The basic issue arose over a demand made under the Railway Labor Act for a change in a rate of pay and a rule relating to the coupling of air, signal and steam hose on the trains of the railroad involved. The carrier resisted the demand, claiming the present rate and rule were forever unchangeable since they were established by arbitration, the arbitration award being fre-

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2. The policy of the United States appears in Section 102 of the Norris-LaGuardia Act. The policy there set forth underlies and determines the interpretation of the act, and the limitations upon the jurisdiction and authority of the court. That section reads in part as follows: "Whereas . . . the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, . . . it is necessary that he have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual activities for the purpose of collective bargaining or other mutual aid or protections; therefore, the folowing definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

quently referred to as the "Cheney Award." Thus the carrier sought to block the Brotherhood's demand for a new rule and a new rate of pay by making the incidental claim that the old rule had somehow become permanent.

Thus the dispute arose over the demand for a rule change. The demand was made by the craft representative. No grievances by individual employees had been asserted; but notwithstanding this, the carrier contends the question as to whether The Cheney Award is forever unchangeable is within the exclusive jurisdiction of the National Railroad Adjustment Board. Otherwise the meaning of that Award is not in issue. The Brotherhood proposed to support its demands by organized effort; and the District Court simply ordered no strike.

The litigation began when the Central of Georgia Railway Company filed a petition in the Superior Court of Chatham County, Georgia, against the Brotherhood and its allied defendants. That petition prayed for a declaration of the legal effects and rights under the "Cheney Award" in its favor, and for injunctive orders, temporary and permanent, against striking in support of the Brotherhood's demands for a new rule. The state court held against the railroad and in favor of the Brotherhood on the merits of the dispute. Both parties appealed to the state supreme court which held merely that the trial court had no jurisdiction of the issue.

Thereupon, the railroad filed in the United States District Court for the Southern District of Georgia a complaint again seeking injunctive aid to prevent a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling hoses. This complaint is voluminous and includes the Cheney Award, the state court petition, the opinion of the state supreme court and an ex parte submission which the carrier had filed with the National Railroad Adjustment Board purporting to ask for a ruling that the Cheney Award could never be altered.

To the federal court complaint the Brotherhood filed a motion to dismiss and an answer. The motion was predicated upon the following grounds:

1. The complaint failed to state a claim upon which relief could be granted.

2. The complaint showed upon its face that the court was without jurisdiction of the subject matter.

3. The court lacked jurisdiction because the complaint showed that the carrier had not exhausted its administrative remedies.

4. The complaint showed upon its face that the carrier was seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris-LaGuardia Act (Title 29, Sections 101-115); and seeks no other relief.

The court overruled each and every ground of the motion to dismiss. Upon hearing the motion for injunction was granted, notwithstanding the fact that no evidence whatever was produced to show threatened or actual violence, no evidence of resort to police protection or any need therefor, and no evidence of inadequate police protection.

The injunction enjoined the Brotherhood defendants from "threatening to or from calling a strike," or other acts against the carrier and from "striking," and certain other acts, "in an effort to or designed or intended: (A) to compel * * * a cancellation, modification, change or revision of the 'Cheney Award'" * * * "or (B) to compel" the carrier "to make a rule or contract provision inconsistent with the Cheney Award" by further insistance upon the Brotherhoods's Section 6 notice for the change in rule so as to require payment for the hose coupling function, "or (C) to compel" the carrier to agree to a contract with the Brotherhood for extra compensation for such coupling.

Upon appeal, the Brotherhood urged four questions arising from the District Court's failure to dismiss the complaint and from the issuance of the injunction.[3] The Court of Ap-

3. The questions were:

"First

"Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second

"Did the railway Carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

peals, cutting straight to the heart of the case, ruled in favor of the respondents on the jurisdictional question. This ruling was upon the motion to dismiss where the jurisdictional question first arose. Without passing upon the other phases of the case, the Court of Appeals correctly ruled that in view of the Norris-LaGuardia Act, the trial court was without jurisdiction to grant an injunction against the strike, and ordered the case dismissed.

The case has recently been reported as 229 F. 2d 901.

Petitioner's statement of the case inaccurately states the Brotherhood's contention as to the effect of the Cheney Award. The Brotherhood's actual contention is that the expiration of the moratorium in the collective bargaining agreements made the hose coupling issue then ripe for negotiation.

Petitioner's statement in its reference to the Brotherhood's position in the State Court as to the jurisdiction of the Adjustment Board seeks to inject here an issue which is completely foreign. In both the District Court and the Court of Appeals the carrier had sought to inject this same feature and it was completely refuted factually and legally.

Petitioner's statement as to the character of the injunctive relief sought is a mere legal conclusion. Contrary to what is stated, it is *not* taken for granted "that the dispute is properly before the National Railroad Adjustment Board and within the Board's original jurisdiction," for the Court of Appeals *expressly* declined even to consider those questions. Statements that the dispute was "negotiated and mediated," if referring to what the carrier's complaint *alleged*, may be considered as correct; but if such statements refer to what the *evidence showed*, they are completely without foundation. For

"Third

"Is a demand for a change in rates of pay, rules, or working conditions, pursuant to the Railway Labor Act, Section 6, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth

"Did the arbitration award in question conclude and thus prevent negotiation of the demand, given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

actually, the carrier refused to negotiate whatever and filed the instant complaint in the United States Court the day before the mediator ended his efforts. Reference to the *State* court litigation is again inaccurate because (1) it omits to state that the State trial court held completely with the Brotherhood on the merits and it (2) fails to mention that the Georgia Supreme Court's holding as to Adjustment Board jurisdiction was based upon allegations in the carrier's petition which showed upon its face that such board had jurisdiction. Furthermore, the statement erroneously identifies the controversy before the Adjustment Board and the federal court as the same. Finally, the characterization of the carrier's federal court complaint, by the lengthy extract from the dissenting opinion in the Court of Appeals, to put it mildly, is certainly far from factual.

## C. ARGUMENT

### 1. Preliminary

We do not believe that this is a case for certiorari. Petitioner has already been given a full and fair opportunity upon the appeal to justify the relief which it sought and obtained in the trial court. It could not do so. Truly it has been said that "The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit of appeals another hearing."[4]

Petitioner seeks the writ of certiorari upon three of the grounds set forth in Rule 19. For the sake of clarity and brevity we will vary the petitioner's order in the treatment of these three points.

### 2. The Fifth Circuit Court of Appeals Decision

The Fifth Circuit decided, in short, that a strike cannot be enjoined, regardless of the provisions of the Railway Labor Act relating to the jurisdictions of the National Mediation Board or the Railroad Adjustment Board. The court stated that the only question involved was

> "whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act,

4. By Chief Justice Taft's opinion in *Mangum Import Co. v. Coty*, 262 U.S. 159, 67 L. ed. 531, 43 S.Ct. 587.

denying jurisdiction to courts to enjoin strikes or work stoppages." The very heart of the decision is embodied in the following holding:

"In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellee's position is that *there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history.*" (Emphasis supplied.)

The opinion of the Court of Appeals was written by Chief Judge Hutcheson. At the outset it approvingly quoted from the case of *Carter v. Herrin Motor Freight Lines*, 131 F. 2d 557, including the language that "all of the acts expressly enumerated in Section 104" (of the Norris-LaGuardia Act), "were no longer to be the subject of injunctive action . . ." Accordingly, it held as "wholly untenable," in view of numerous cases, the contention that the injunction sought to prevent "a breach of contract embodied in the Cheney Award." Likewise, it held that the "claim that the purpose of the strike and its effect would do violence to statutory procedures embodied in the statute having disposition of controversy by the Railroad Adjustment Board was equally unsound." It called attention to decisions of that and this court holding that to contend that the purpose of a strike may be illegal "was an attempt to enlarge the jurisdiction of the Federal Court jurisdiction as limited by" the Norris-LaGuardia Act.

The court of appeals opinion recites some of the purposes of the Railway Labor Act and observes that

"*none* of the sections manditorily provides that disputes *must* be submitted to the Board rather than being handled

by the voluntary methods provided for in the same act." (Emphasis supplied.)

Further it said that if Congress, immediately after passing the Norris-LaGuardia Act, had

> "intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided."

Right there it called attention to this court's decision in *General Committee of Adjustment v. Missouri-Kansas Ry. Co.*, 320 U.S. 323, and to the burden which it casts upon one seeking to justify the judicial remedy sought here.

The Court of Appeals ruled against petitioner's charges of unlawful acts being threatened, or inadequate police protection, as wholly unsupported in the evidence. It held it unnecessary to rule upon the jurisdiction of the administrative agencies under the Railway Labor Act, or to pass upon several other claims which had been made by the parties. It concluded by stating that the pendente lite character of the injunctive relief sought "to maintain the status quo pending the decision of the question by the Adjustment Board," was immaterial, because a labor dispute was involved and an injunction was sought.

We submit that the opinion of the Court of Appeals demonstrates a strong grasp of the entire case, a correct understanding of the law involved, and sets forth a clear, direct and decisive adjudication of the issues. We believe that decision was correct and will stand as a firm precedent.

### 3. The Question Decided is Not in Conflict With Applicable Decisions of this Court

Petitioner contends that the decision of the Court of Appeals "is in conflict with *analogous and thus* applicable decisions" of this court. (Emphasis supplied.)

This contention, we submit, does not conform to Rule 19 which provides for certiorari

"(b) where a court of appeals has * * * decided a federal question in a way in conflict with applicable decisions of this court."

Thus the only conflict which petitioner could find was remote, indirect and of no significance.

Petitioner relies upon certain authorities in the dissenting opinion. Yet, not a single one shows any such conflict. Those are decisions relied upon as supportive of its position that a federal court may grant an injunction against a strike, even in the face of the Norris-LaGuardia Act. But of paramount significance here is that *none* of those cases *involved* an *injunction against any act* which is *insulated from injunction* by the Norris-LaGuardia Act.[5] Specifically, none even involved a strike.

The cases cited in the dissenting opinion will be individually referred to hereinafter. They furnish scant if any support for petitioner's contentions. Moreover the dissenting opinion fails to heed two very important cases.

With respect to the case of *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, L. ed. 63, 61 S.Ct. 112, the court of appeals said:

"For, as has been held time and again, the purpose of the strike, whether it is or is not legal, is not a limitation upon the prohibitions of the statute. *Cf. Wilson & Co. v. Birl*, 105 F. 2d 948, and *East Texas Motor Freight Lines v. Teamsters*, 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the Act. *Cf. Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, and 43 C. J. S. 748 and 29 A. L. R. (2) 360."

The *Milk Wagon Drivers Union* case also deals with the jurisdictional feature due to the Norris-LaGuardia Act. It

5. Section 104 of that Act provides as follows:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment;" (then follows other acts not involved here but likewise exempted from injunction).

is strikingly similar to the one at bar. There, a controversy arose between the Union and the employer over the "vendor system" of delivery which the employer had established. To combat it, the employees began to picket the stores employing it. Thereupon, the employer sought in the United States District Court an injunction. The trial court denied it, but the Circuit Court of Appeals reversed.

Upon reaching here, this court unanimously held that:

> "The jurisdictional prerequisites to the granting of an injunction in a labor dispute, prescribed by the Norris-LaGuardia Act (47 Stat. at L. 70, chap. 90, 29 USC, Secs. 101-115), must be satisfied before injunctive process can be issued against a labor union charged with violating the Sherman Anti-trust Act."

In the opinion this apt language applies with equal force here:

> "For us to hold in the face of this legislation, that the Federal Courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress."

The dissenting opinion in the court of appeals in the instant case completely overlooks and does not even cite the case of *General Committee of Adjustment v. Missouri-Kansas-Texas Ry. Co.*, 320 U.S. 323, 88 L. ed. 76, 64 S.Ct. 1282. This case points out not only that the strike weapon is preserved, but also that, Congress having failed to provide for court injunctions, none was intended. The Court said:

> "In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, *in addition to the available economic weapons,* remain unchanged in large areas of this railway labor field." P. 332 (underscoring supplied).

Further, the court said:

> "All else is left to those voluntary processes whose use Congress has long encouraged to protect those ar-

teries of interstate commerce from industrial strife. The concept of mediation is the antithesis of justiciability.

"In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforceable in the courts should be implied." (p. 337.)

The weight of those two cases inclines the scales decidedly in favor of the conclusion which the court reached. They resound harmoniously with that result. The contrary view, as expressed in the dissenting opinion and urged here by petitioner, is in discord with such cases and others of this court.

## 4. There is no Conflict Between the Fifth and Seventh Circuits Warranting Certiorari in This Case

It is true that the Seventh Circuit in the case of *Chicago River and Indiana Railroad et. al v. Brotherhood of Railroad Trainmen* did not feel restrained in its issuance of an injunctive order, by the Norris-LaGuardia Act, while the Fifth Circuit in the instant case felt otherwise. Nevertheless the two courts were dealing with different problems. In the *Chicago River and Indiana* case only grievances were involved; whereas in the instant case a Section 6 notice for a new rule was the cause of the carrier's seeking an injunction. The *Chicago River and Indiana* case involved twenty-one "grievances." *Elgin v. Burley*, 325 U.S. 711, 89 L. ed. 1886, 65 S.Ct. 1282, classifies disputes of this character as "minor." It differentiates them from disputes involving the making of collective agreements and characterizes these disputes as "major" disputes. It is clear that the Railway Labor Act authorizes submission of such minor disputes to the Railroad Adjustment Board; and it vests the National Mediation Board with jurisdiction of "major disputes."

It is thus clear that the decision of the Seventh Circuit actually turned upon the handling of grievances whereas the Fifth Circuit case was one dealing with the rule making function of collective bargaining representatives. *Elgin v. Burley* undertakes to demonstrate the intention of Congress to provide separate treatment for the two different types of disputes. The Seventh Circuit said:

"Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over *minor disputes*, it operates to repeal the provisions of the Norris-LaGuardia Act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiff's prayer for injunctive relief." (Emphasis supplied.)

While we are convinced that the Seventh Circuit decision is erroneous, we submit that it does not present such a conflict with the instant case as to warrant granting the writ of certiorari in the instant case. What Congress intended with reference to minor disputes is quite a different thing from its intention with respect to major disputes.[6]

## 5. The Question Presented is Not of Sufficient Importance As To Warrant the Writ of Certiorari

The remaining ground for this petition for certiorari claimed by petitioner is that the court of appeals "has decided an important question of Federal law which has not been, but should be, settled by this court."

After the Norris-LaGuardia Act was enacted in 1932 and the Railway Labor Act was amended in 1934 — twenty-odd years passed before the question sought to be presented to this court apparently was even raised before a trial court. Yet,

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6. "What constitutes a 'conflict'? . . . The concept is not an exact one. One point may be stressed: the Court is interested in conflicts which impair uniformity of decision where uniformity is significant, conflicts which its decision in the particular case will remove. This rules out, of course, hosts of particularistic applications of general rules turning upon the analysis of special states of fact." ("The Business of the Supreme Court at October Term, 1933," Frankfurter and Hart, 48 Harv. L. Review, Rev. 238, 268.)

there have been many strikes, unrestrained by injunctions, during that long period of time. Logically, we may assume that before 1955, few seriously entertained the view that an injunction could be had in the federal court against a strike. In the opinion of the court below, prepared by its able spokesman, appear words which speak our thoughts better than we can. Referring to the Norris-LaGuardia Act, the court said:

> "The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means of advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike, that labor disputes as such are not at all reprobated, but encouraged, and only violence in connection with them is forbidden . . ."

The reference by this court in the *General Committee of Adjustment* case, supra to "economic weapons" in reviewing the present Railway Labor Act, shows that strikes are contemplated, sought to be avoided, but are lawful. The author of the *Elgin* opinions when speaking for the Court of Appeals for the District of Columbia, said "the Railway Labor Act was designed, not to outlaw the right to strike, but merely to prevent the necessity for its exercise."[7] Had Congress intended to outlaw strikes, it would have done so expressly in that Act. The Act does not deal with injunctions at all.

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7. *Washington Terminal Co. v. Boswell*, 124 F.2d 235, 247 (Aff. 319 U.S. 732, 87 L. ed. 1694, 63 S.Ct. 1430).

## 6. Petitioner's Cases

The petitioner relies upon the following cases:

1. *Virginian Ry Co. v. System Federation* No. 40, 300 U.S. 515, 81 L. ed. 789, 57 S.Ct. 592, involves an injunction sought by employees against a railway carrier to recognize and treat with their union, the only authorized bargaining representative, as is required by Section 2 of the Railway Labor Act. But, there it was the *carrier* who sought the *protection of the* Norris-LaGuardia Act, seeking to rely upon its Section 9 (109), which deals with the *scope* of injunctions. No *strike*, or any other act enumerated in Section 4 (104), *was even involved* in that case. The court merely held that the Norris-LaGuardia Act was not passed to shield the actions of a carrier which had violated the Railway Labor Act. Obviously, a railroad's duty to treat with an employees' bargaining representative (Railway Labor Act's Section 2), is not one of those acts exempt from injunction by the Norris-LaGuardia Act's Section 4 (104).

2. *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U.S. 232, 94 L. ed. 22, 70 S.Ct. 14, dealt with an injunction issued in favor of *employees* against certain railroads and a union restraining compliance with a collective labor agreement which discriminated against colored firemen. Like the *Virginian Ry.* case, supra, no strike or any other act exempted by Section 4 (104) of the Norris LaGuardia Act was involved. So, this court held that

> "the Norris-LaGuardia Act (29 U.S.C. Secs. 101 et seq.) did not deprive Federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act (45 U.S.C. Secs. 151 et seq.) enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act" (headnote 4).

While the Court held that the controversy there was a labor dispute, nevertheless it further said that the Railway Labor Act imposed upon the bargaining representative the duty to represent all without hostile discrimination. Accordingly, it said that the Norris-LaGuardia Act did not "contain anything to suggest that it would deprive these Negro firemen

of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs." No strike, or any other act enumerated and protected against injunction by Section 4 (104) of the Norris-LaGuardia Act was even involved there. Petitioner quotes extensively from the *Graham* opinion; but nothing in the quotations is supportive of the carrier's position that a strike may be enjoined as prayed here.

3. *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548, 74 L. ed. 1034, 50 S.Ct. 427, involved an injunction by employees against a railway carrier to restrain the company's influence and coercion of them with reference to their organization and designation of their collective bargaining representative under the Railway Labor Act as it existed before the 1934 amendment. Such created a duty, which was judicially enforceable. Again no strike, or any other act protected against injunction by Section 4 (104) of the Norris-LaGuardia Act, was involved.

4. *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 96 L ed 1293, 72 S.Ct. 1022, was another Negro discrimination decision in which, like *Graham*, supra, certain railway employees obtained an injunction against enforcement of a racially discriminatory agreement made by their carrier and bargaining representative, this court holding that such an agreement was void and unenforceable. In so deciding it held that the trial court had jurisdiction, regardless of the Norris-LaGuardia Act, citing the other racial discrimination cases of *Steele* (323 U. S. 192, 89 L. ed. 173, 65 S.Ct. 226), *and Graham, supra*.[8] Nothing in the *Howard* case is supportive of petitioner's contention. Here again, in the *Howard* case, there was no strike or any other of the acts specified in Section 4 (104) of the Norris-LaGuardia Act.

None of the *Virginia Ry Co., Graham, Texas and N. O. Ry. Co., Howard* cases involved either a (1) strike, or (2) any other activity insulated by Section 4 (104) of the Norris-LaGuardia Act, or (3) the Adjustment Board. On the contrary, *all* involved injunctions granted (1) at the instance of

8. Petitioner's quotation on page 21 of its brief taken from the *Howard* case is unintentionally misleading, in that the parenthetical phrase "to enforce the Railway Labor Act" does not appear in the text. Nor has it been indicated that this phrase was supplied by the briefer.

*employees* against their railway carrier *employer* and (2) for protection of their rights as contemplated by the *Norris-LaGuardia Act*. The statement is made on page 22, paragraph 1, of petitioner's brief that the enforceable obligations in *those cases* make it "equally clear" that this court "has held that where one party has submitted a controversy to the National Railroad Adjustment Board, it is the obligation of the other party to await the outcome of that decision." None of these cases supports petitioner's conclusion.

5. *Order of Railway Conductors v. Pitney*, 326 U.S. 561, 90 L. ed. 318, 66 S.Ct. 322, is next cited. There the Court *denied* an injunction. Furthermore, the case did not involve either (1) a strike, or (2) any other activity embraced in Section 104 of the Norris-LaGuardia Act. Actually, it involved a dispute primarily *between two railway brotherhoods*, each claiming that its respective contract with the railway carrier entitled it to the work in question. The carrier was in reorganization, and filed in the *federal* court an *equitable* proceeding in the nature of a petition to instruct its trustee and for injunction. This case involved an interpretation of the labor contracts of two competing unions. The court held that until those contracts had been construed by the National Railroad Adjustment Board, one could not tell whether the conductors were entitled to the work which they were asking to have enjoined from going to the competing union. We submit it is fallacious to argue that the denial of an injunction is proof of the court's power to grant one. The court stayed dismissal of the action as it involved a question of instructions to the court's trustee. The petitioner's argument that the court's purpose in granting the stay was to maintain the status quo is wholly misleading and incorrect.

6. *Elgin, Joliet and Erie Ry. Co. v. Burley*, 325 U.S. 711, 89 L. ed. 1886, 65 S.Ct. 1282, is important because it differentiates between "grievances" and "major disputes" insofar as their administrative handling is concerned. It does not involve either (1) an injunction, or (2) a strike or any other of the acts insulated by Section 104 of the Norris-LaGuardia Act. Like *Pitney*, it does not even mention that act. At the outset it referred to certain language in the *Moore* case (*Moore v. Illinois Central Ry. Co.*, 312 U.S. 630, 85 L. ed. 1089, 61 S.Ct. 754), to-wit, that the machinery provided for

settling disputes was not "based on a philosophy of legal compulsion" but created "a system for peaceful adjustment and mediation voluntary in its nature," and its holding that resort to Adjustment Board may not be necessary in a case involving unlawful discharge. The court points out that another of the Railway Labor Act's "primary commands, judicially enforceable" is the duty to negotiate. But, nowhere in the *Burley* decisions can be found any support that a United States District Court may enjoin a strike, as contended here.

7. *Slocum v. Del., Lakawanna & Western Railroad Co.*, 399 U.S. 239, 94 L. ed. 795, 70 S.Ct. 577, is similar to the *Pitney* case, applying its doctrine to state courts. No injunction or other equitable relief was sought in the *Slocum* case. There was no strike. The Norris-LaGuardia Act was not even mentioned. What the court said about the exclusiveness of the jurisdiction of the National Railroad Adjustment Board in interpreting agreements related solely to grievances and minor disputes. It had nothing whatever to do with strikes and major disputes.

8. *Order of Railway Conductors of America v. Southern Railway Company*, 339 U.S. 255, 94 L. ed. 811, 70 S.Ct. 585, was like the *Slocum* case in that the carrier had filed in the State court its petition for declaratory judgment to interpret a collective bargaining agreement. This court ,at the outset, remarked that the case presented "the same statutory question as" the *Slocum* case, and held that "for reasons set out in the *Slocum* case . . ." the South Carolina State Court was without power to interpret the terms of this agreement and to adjudicate the dispute. Certainly, nothing in that case is supportive of petitioner's position for an injunction against a strike.

In the *Pitney, Slocum* and *Southern Ry.* cases the doctrine of exclusive administrative jurisdiction constituted a valid defense against the carriers' efforts to obtain judicial relief. In the case at bar the carrier seeks to invoke that doctrine, as supportive of an injunction in its behalf. In fact, in the three cases mentioned no such use was made of the doctrine. In *Pitney* an injunction was *denied* because of the doctrine. It is apparent that the cases cited do not in any way justify the use which petitioner is attempting to make of that doctrine.

9. The last decision of this court relied upon by the petitioner is *Cook County National Bank v. United States*, 107 U. S. 445, 27 L. ed. 537, 2 S.Ct. 561. Petitioner on page 27 of its brief quotes a short extract from this case. The quotation is a statement, in very general terms, which the court used to express the repeal or supersession of the insolvency act of 1797 by the National Banking Law enacted some decades later. We do not quarrel with the principle there stated, except to point out that repeals by implication are not favored.

The character of the banking laws and the character of the Railway Labor Act as repealing statutes by implication are not at all alike. Moreover the time element between the National Banking Laws and the Insolvency Laws of 1797 and the time of approximately two years between the Norris-LaGuardia Act and the Railway Labor Act are totally dissimilar. It is impossible to see that the reason for the repeal of the insolvency laws of 1797 by the banking act forms any grounds whatever for the repeal of the Norris-LaGuardia Act by the Railway Labor Act. As petitioner's quotation says,

> "The question is one respecting the intentions of the Legislature."

## D. CONCLUSION

We have thoroughly studied this petition and have carefully laid its contents alongside the rule authorizing certiorari. It fails to measure up. We submit that the grounds therein asserted for the issuance of the writ are unsupported and unconvincing. We feel that all of the parties should, at long last, in keeping with both the Norris-LaGuardia Act and Railway Labor Act, be freed from judicial restraint and be afforded an opportunity to solve their own problem.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, Benning M. Grice, one of the attorneys of record for Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al., respondents herein, depose and say that I have this day served a copy of the foregoing brief on Central of Georgia Railway Company, petitioner herein, by depositing the same in a United States mail box, with first class postage prepaid, addressed to John B. Miller, Esq., one of the counsel of record for petitioner, at his post office address in Savannah, Georgia.

Subscribed to before
me this June 4, 1956 ----------

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Notary Public, Bibb County, Georgia

Office - Supreme Court, U.S.
FILED
JAN 2 1957
JOHN T. FEY, Clerk

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

Case No. 84.

CENTRAL OF GEORGIA RAILWAY COMPANY,
Petitioner,

v.

BROTHERHOOD OF RAILROAD TRAINMEN;
LOCAL LODGE NO. 721, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

## PETITIONER'S BRIEF ON THE MERITS.

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## INDEX.


| | Page |
|---|---|
| Opinions delivered by the Courts below | 1 |
| Grounds for jurisdiction of this Court | 2 |
| Statutes involved | 3 |
| Railway Labor Act | 3 |
| Norris-LaGuardia Act | 6 |
| Questions presented for review | 8 |
| Statement of the case | 9 |
| Summary of argument | 14 |
| Argument | 15 |
| The Railway Labor Act requires that the dispute be submitted to the National Railroad Adjustment Board for "prompt and orderly" settlement | 17 |
| The Norris-LaGuardia Act deprives the several District Court Judges of power to enjoin a railroad strike over a dispute under the jurisdiction of and pending before the National Railroad Adjustment Board | 28 |
| Appendix A | 41 |


### Cases Cited.


| | |
|---|---|
| Brotherhood, etc., v. Atlantic Coast Line R. Co., 201 F. (2) 36 (4th C., 1953) | 35 |
| Brotherhood of Railroad Trainmen v. Howard, 343 U. S. 768, 96 L. Ed. 1283, 72 S. Ct. 1022 (1952) | 34 |

Brotherhood of Railroad Trainmen, Local Lodge No. 721 et al. v. Central of Georgia Railway Company, 229 F. (2) 901 (5th C., 1956) ..... 2

Carter v. Herrin, 131 F. (2) 557 (5th C., 1942) ..... 15

Chicago River and Indiana Railroad Company et al. v. Brotherhood of Railroad Trainmen et al., 229 F. (2) 926 (7th C., 1956) ..... 2, 26, 38

Cook County National Bank v. United States, 107 U. S. 445, 27 L. Ed. 537, 2 S. Ct. 561 (1883) ..... 41

Elgin, Joliet & Eastern R. Co. v. Burley, 325 U. S. 711, 89 L. Ed. 1886, 65 S. Ct. 1282 (1945) ..... 21, 23, 37

General Committee of Adjustment, etc., v. Missouri-Kansas-Texas R. Co., 320 U. S. 323, 88 L. Ed. 76, 64 S. Ct. 146 (1943) ..... 28

Graham v. Brotherhood of Locomotive Firemen and Enginemen, 338 U. S. 232, 94 L. Ed. 22, 70 S. Ct. 14 (1949) ..... 31, 32, 38

Local 19, Warehouse, etc., v. Buckeye Cotton Oil Co., 236 F. (2) 776 (6th Cir., 1956) ..... 38

M-K-T Railroad Co. v. Brotherhood of Ry. & S. S. Clerks, 188 F. (2) 302 (7th C., 1951) ..... 36

New York Central Railroad Company v. Brotherhood of Railroad Trainmen et al., 140 F. Supp. 273 (N. D. Ohio, 1956) ..... 35

Order of Railway Conductors of America v. Southern Railway Company, 339 U. S. 255, 94 L. ed. 811, 70 S. Ct. 585 (1950) ..... 17, 24, 25, 26

O. R. C. v. Pitney, 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct. 322 (1946) ..... 26, 31

Railroad Yardmasters of America v. Pennsylvania Railroad Company, 224 F. (2) 226 (3rd Cir., 1955) .. 35

Railway Employees Coop. Assn. et al. v. A. B. & C. R. Co., 22 F. Supp. 510 (Ga., 1938) ..... 37

Rolfes v. Dwellingham, 198 F. (2) 591 (8th C., 1952) .26, 35

Slocum v. Delaware, L. & W. R. Co., 339 U. S. 239, 94 L. Ed. 795, 70 S. Ct. 577 (1950) ..... 17, 25
Steele v. L. & N. R. Co., 323 U. S. 192, 89 L. Ed. 173, 65 S. Ct. 226 (1944) ..... 32
Switchmen's Union of N. A. v. National Mediation Board, 320 U. S. 297, 88 L. Ed. 61, 64 S. Ct. 95 (1943) 28

Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks, 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. (1930) ..... 33
Textile Workers Union of America v. Alco Manufacturing Co., 94 F. Supp. 626 (M. D., N. C., 1950) ..... 37
Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210, 89 L. Ed. 187, 65 S. Ct. 235 (1944) ..... 32

United States v. Brotherhood of Locomotive Engineers (1948, D. C.), 79 F. Supp. 485, cert. den. 335 U. S. 867, 93 L. Ed. 412, 69 S. Ct. 137 ..... 37

Virginian Railway Company v. System Federation, 300 U. S. 515, 81 L. Ed. 789, 57 S. Ct. 592 (1937) ... 29, 31, 38

Walters v. Chicago and N. W. Ry. Co., 216 F. (2) 332 (7th C., 1954) ..... 25

**Statutes Cited.**

Norris-LaGuardia Act:
Section 1 ..... 6
Section 2 ..... 7
Section 4 ..... 7
Section 104 ..... 29
Railway Labor Act:
Section 1a ..... 3
Section 2 First ..... 3
Section 2 Second ..... 4
Section 2 Sixth ..... 4
Section 3 First (i) ..... 5

Section 3 First (m) ..... 5
Section 3 First (p) ..... 6
Title 28, U. S. C., Section 1254 (62 Stat. 928)..... 2
Title 28, U. S. C., Section 1331..... 9
Title 28, U. S. C., Section 1337..... 9
Title 29, U. S. C., Section 101..... 6
Title 29, U. S. C., Section 102..... 7
Title 29, U. S. C., Section 104..... 7
Title 45, U. S. C., Section 151a..... 3
Title 45, U. S. C., Section 151 et seq. ..... 9
Title 45, U. S. C., Section 152 First..... 3
Title 45, U. S. C., Section 152 Second..... 4
Title 45, U. S. C., Section 152 Sixth..... 4
Title 45, U. S. C., Section 153 First (i).....5, 18
Title 45, U. S. C., Section 153 First (m).....5, 18
Title 45, U. S. C., Section 153 First (p)..... 6

**Congressional Record and Committee Reports.**

78 Cong. Rec. 12083 .....21, 54
Hearings Before the Committee on Interstate Commerce—U. S. Senate—73rd Congress, 2d Session on S. 3266 ..... 43
Hearings Before the Committee on Interstate and Foreign Commerce—H. of R.—73 Congress, 2d Session on H. R. 7650 and 9689..... 43
Senate Report No. 1065, 73rd Congress, 2d Session..43, 52
H. Report No. 1944, 73rd Congress, 2d Session.....43, 53

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# SUPREME COURT OF THE UNITED STATES.

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BROTHERHOOD OF RAILROAD TRAINMEN;
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## PETITIONER'S BRIEF ON THE MERITS.

Comes Now Petitioner, Central of Georgia Railway Company, and within the time permitted by the rules of this Court, respectfully submits this, its brief, on the merits of the case.

### I.

### OPINIONS DELIVERED BY THE COURTS BELOW.

(1)

The opinion of the United States District Court for the Southern District of Georgia, in the case at bar, styled in that court as **Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, Local Lodge No. 721**

et al., Civil Action No. 797, has not been officially reported but is printed at pages 219 through 240 inclusive in the record for this Court.

(2)

The opinion of the United States Court of Appeals for the Fifth Circuit in the case at bar, styled in that court as **Brotherhood of Railroad Trainmen, Local Lodge No. 721 et al., Appellants, v. Central of Georgia Railway Company, Appellee,** case No. 15671, is reported in 229 F. (2) 901, and printed at pages 257 through 275 inclusive in the record for this court.

II.

## GROUNDS FOR JURISDICTION OF THIS COURT.

The judgment of the United States Court of Appeals for the Fifth Circuit in the case at bar was dated and entered on February 10, 1956; rehearing denied April 2, 1956. By order dated April 11, 1956, the Court of Appeals stayed mandate. Petition for Writ of Certiorari was granted by this Court on October 15, 1956. Jurisdiction of the United States Supreme Court to review the judgment of the Court of Appeals in this case is conferred by Title 28, U. S. C., Section 1254 (62 Stat. 928) and acknowledged by Rule 19 of the United States Supreme Court rules.

It is Petitioner's contentions that: (1) the opinion to be reviewed is in direct conflict with the decision of the Court of Appeals for the Seventh Circuit decided February 6, 1956, in the case of **Chicago River and Indiana Railroad Company et al. v. Brotherhood of Railroad Trainmen et al.,** case No. 11474, reported in 229 F. (2) 926; (2) the opinion sought to be reviewed decided an important Federal question which has not been, but should be, specifically settled by this Court; and (3) the opinion sought to be reviewed is in conflict with analogous and therefore applicable decisions of this Court.

## III.

## STATUTES INVOLVED.

This case involves the inter-relationship of the Norris-LaGuardia Act and the Railway Labor Act. The pertinent provisions of both acts are as follows:

(1)

### Railway Labor Act.

"The purposes of the chapter are (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions." (This section was added by the 1934 amendment, 48 Stat. 1186.) (Section 1a of the Railway Labor Act; Title 45, U. S. C., Section 151a.)

"It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." (This was a provision of the Railway Labor Act of 1926, 44 Stat. 577.) (Section 2 First of the Railway Labor Act; Title 45, U. S. C., Sec. 152 First.)

"All disputes between a carrier or carriers, and its or their employees shall be considered, and, if pos-

sible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute." (This was a provision of the Railway Labor Act of 1926, 44 Stat. 578.) (Section 2 Second of the Railway Labor Act; Title 45, U. S. C., Sec. 152 Second.)

"In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And Provided Further, that nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties." (This in substance was in Railway Labor Act of 1926, 44 Stat. 578.) (Section 2 Sixth of the Railway Labor Act; Title 45, U. S. C., Sec. 152 Sixth.)

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, * * *, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but,

failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (This section was added by the 1934 amendment, 48 Stat. 1191.) [Section 3 First (i) of the Railway Labor Act; Title 45, U. S. C., Sec. 153 First (i).]

"The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute." (This Section was added by the 1934 amendment, 48 Stat. 1191.) [Section 3 First (m) of the Railway Labor Act; Title 45, U. S. C., Sec. 153 First (m).]

"If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the dis-

trict court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board." (This Section was added by 1934 amendment, 48 Stat. 1192.) [Section 3 First (p) of the Railway Labor Act; Title 45, U. S. C., Sec. 153 First (p).]

(2)

**Norris-LaGuardia Act.**

"No Court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy in this chapter." (Section 1 of the Norris-LaGuardia Act, 1932, 47 Stat. 70; Title 29, U. S. C., Section 101.)

"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

"Whereas under prevailing economic conditions, developed with the aid of governmental authority for

owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents; in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted." (Section 2 of the Norris-LaGuardia Act, 1932, 47 Stat. 70; Title 29, U. S. C., Section 102.)

"No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

> "(a) Ceasing or refusing to perform any work or to remain in any relation of employment." * * * (Section 4 of Norris-LaGuardia Act, 1932, 47 Stat. 70; Title 29, U. S. C., Section 104.)

IV.

## QUESTION PRESENTED FOR REVIEW.

**The single question presented for review is whether or not the Norris-LaGuardia Act deprives the United States District Court of jurisdiction to maintain the status quo for the purpose of preventing irreparable injury by enjoining a strike threatened by the Brotherhood of Railroad Trainmen to enforce the Brotherhood's views in a labor dispute over which the National Railroad Adjustment Board has jurisdiction, such injunction to remain in force pending the settlement of the dispute by the Board to which the dispute has been properly submitted for decision pursuant to the Railway Labor Act.**

There were several ancillary questions before the Court of Appeals but the majority opinion did not decide them, the majority holding that the Norris-LaGuardia Act denied jurisdiction to the District Court to enjoin a strike irrespective of the National Railroad Adjustment Board's jurisdiction.

The question was raised in this manner:

The District Court, after a hearing on petitioner's motion for preliminary injunction, found that the Brotherhood, a duly authorized bargaining representative under and subject to the Railway Labor Act, was threatening to call a system-wide strike on the Central of Georgia Railway Company, a common carrier by rail subject to the Railway Labor Act. That such threatened strike was designed to enforce the Brotherhood's position in a dispute over which the National Railroad Adjustment Board had exclusive jurisdiction and that such dispute had been properly submitted to that Board and was then pending before that Board for decision. That such strike if put

into effect would result in irreparable injury to the Central. The District Court granted the preliminary injunction to preserve the status quo pending further order of the court, and in effect pending final hearing, and pending a decision of the dispute by the National Railroad Adjustment Board. Appeal was taken by the Brotherhood of Railroad Trainmen from the order denying its Motion to Dismiss and granting the preliminary injunction. The Court of Appeals, by a split decision, reversed the District Court holding that the Norris-LaGuardia Act was controlling and that the District Court had violated the Norris-LaGuardia Act, there being "no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history". Rehearing was denied by a split decision.

Thus it is that the Court of Appeals decided only the single point.

## V.

## STATEMENT OF THE CASE.

The District Court has jurisdiction over this complaint because it arises under the laws of the United States and the matter in controversy exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs (Title 28, U. S. C., Sec. 1331); and also because the complaint arises under an Act of Congress regulating commerce (Title 28, U. S. C., Sec. 1337). Said laws of the United States and said Act of Congress regulating commerce are found in the Railway Labor Act, Title 45, U. S. C., Sec. 151, et seq.

The Central of Georgia Railway Company, by complaint, sought and the Court granted, an injunction against a threatened imminent strike by the Brotherhood of Railroad Trainmen and their craft, pending the determination by the National Railroad Adjustment Board of the dispute giving rise to the threatened strike. The strike, if called, would result in irreparable injury to the Central. The dispute involved the interpretation of an existing labor contract and had been submitted by the Railway to the Board. The dispute over the contract provision involved whether it was a basic duty of the defendants' craft to couple and uncouple air, steam and signal hose, or whether they should be paid an "arbitrary" therefor.

**However, in the District Court no declaratory relief or interpretation of the contract was sought or obtained.** The relief sought in the complaint basically was a preservation of the status quo to avoid irreparable injury, pending the decision of the National Railroad Adjustment Board. The relief sought was protection by a court of equity of orderly administrative procedure under the Railway Labor Act. As the Court of Appeals decision was based solely on a jurisdictional point, both the nature and the merits of the "hose coupling dispute" are not in issue. **Therefore, insofar as this review by Certiorari is concerned, it must be taken as granted that the dispute is properly before the National Railroad Adjustment Board and within the Board's exclusive original jurisdiction.** The dispute arose as follows:

On November 28, 1953, the Brotherhood of Railroad Trainmen served notice on the Central of Georgia Railway (contained in Main Exhibit "C" to complaint, alleged in paragraph 18, R. 9; found R. 36 and 37; stipulated R. 92) for a change in contract terms providing an arbitrary of $1.50 per day or trip for foremen and switchmen employed in yards and trainmen employed on switch local

assignments and or local freight assignments upon condition that said employees "may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains." In reply to this notice the Central took the position that in a 1951 arbitration award known as the Cheney Award it had been decided with finality between the parties that such duties were a part of the basic duties of the defendants; the Cheney Award had been made a part of the collective bargaining contract between the parties; and therefore, such request for a change was contrary to the terms of the existing contract. This dispute was unsuccessfully negotiated and mediated. A strike was threatened. It was taken into the State Courts by the Central Railway and at the instance of the Brotherhood, the Supreme Court of Georgia (Sub Exhibit "J" to Main Exhibit "C", R. 75; alleged in paragraph 18, R. 9; stipulated R. 92), held that the dispute was a matter for the original primary jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act. Thereupon the Central submitted the identical controversy to the National Railroad Adjustment Board for a decision. **After requesting and obtaining additional time within which to answer the submission to the National Railroad Adjustment Board**, the Brotherhood called a strike for February 18, 1955. The dispute was again negotiated and mediated; but there appeared no settlement and the strike was imminent. Thereupon the Central filed the complaint in the United States District Court for the Southern District of Georgia. Judge Brown's dissenting opinion in the Court of Appeals (R. 267) accurately described the complaint as follows:

> "• • • here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of a threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and sig-

nificance of the contract (Cheney Award) was itself a 'dispute (s) between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions * * *', 45 U. S. C. A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved."

To the complaint the Brotherhood filed a motion to dismiss for want of jurisdiction on the ground, among others, that the Norris-LaGuardia Act prohibited the relief sought. This was overruled. After hearing, the District Court granted the preliminary injunction, concluding that the Norris-LaGuardia Act was not intended by Congress to deprive a District Court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Railroad Adjustment Board; and that to prevent irreparable injury it was necessary to preserve the status quo of the controversy now before the Board.

The Brotherhood appealed the order denying its motion to dismiss for want of jurisdiction, and the order granting the preliminary injunction, presenting several questions.

However, the **majority opinion** of the Court of Appeals considered only the jurisdictional question, and concluded that the Norris-LaGuardia Act would prohibit a United States District Court from enjoining a threatened strike over a dispute over which the National Railroad Adjustment Board had jurisdiction and before which Board the dispute was pending for settlement at the very time that the strike was called.

Upon petition of the Central of Georgia Railway Company, this Court granted the Writ of Certiorari.

VI.

## SUMMARY OF ARGUMENT.

To prevent irreparable injury, a Federal District Court has jurisdiction in a proper case to enjoin a strike in order to maintain the status quo ante in a dispute over the interpretation of a railway labor contract, where such dispute has been properly submitted to the National Railroad Adjustment Board under the Railway Labor Act for decision. On this appeal it is conceded that the Board has jurisdiction.

Where a party to such a minor dispute is dissatisfied with the results of negotiations at the railway management-labor level, and submits the dispute to the Adjustment Board for decision, such "statutory arbitration procedure" is mandatory upon the other party. The other party cannot resort to self-help pending the decision of the Board. In other words, the procedure is compulsory. This conclusion is supported by the legislative history of the Railway Labor Act and by judicial decision.

Therefore, when a union calls a strike over such a dispute in such a case the Federal District Court, to prevent irreparable injury, may maintain the status quo ante of the dispute by enjoining the strike pending Board action. The Court may so enforce the positive mandates of the Railway Labor Act under the Court's general equity powers to prevent irreparable injury.

The Norris-LaGuardia Act was not intended by Congress to prevent a Federal Court from exercising such jurisdiction. To hold otherwise would be to permit the Norris-LaGuardia Act to completely nullify the positive mandates of the Railway Labor Act providing for the orderly settlement of minor disputes.

## VII.

## ARGUMENT.

The practical effect of the majority opinion of the Court of Appeals in this case is that, **because of the Norris-LaGuardia Act**, the disputes settlement machinery of the Railway Labor Act is merely optional in so far as a railroad labor union is concerned and may be disregarded by such union. However, this conclusion is contrary to the decisions of this and inferior federal courts. The Court of Appeals decision is also completely inconsistent with the purpose and legislative history of the Railway Labor Act.

The majority opinion reached its conclusion in the main by following its own reasoning in **Carter v. Herrin**, 131 F. (2) 557 (5th C. 1942), which held that the Norris-LaGuardia Act prevented a Federal Court from enjoining a strike. We do not take issue with that case on its own facts but it is entirely unrelated to our case. We are here concerned with the Railway Labor Act and a railway labor dispute over which the National Railroad Adjustment Board has jurisdiction. The Carter case involved a dispute over the right of union to represent the employees of a Trucking Company.

In the case at bar, the Court of Appeals held (R. 261 through 262):

> "In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, **or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with**

**jurisdiction to decide it.** This is so because the fundamental weakness of appellee's position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history. (Emphasis added.)

"It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. **It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the Board rather than being handled by the voluntary methods provided for in the same act.** (Emphasis added.)

"If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in General Committee of Adjustments, etc., v. Missouri-Kansas-Texas R. Co., 320 U. S. 323, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-La-

Guardia Act expressly withdraws from the Federal Courts.

"In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly unnecessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case."

Thus on this review we must assume that the National Railroad Adjustment Board has jurisdiction over this dispute. (Judge Brown in his dissent in the Court of Appeals went beyond the majority opinion and held this to be true.)[1] The majority, however, did not decide that issue.

Petitioner will divide its argument on this question into two segments.

A.

**The Railway Labor Act Makes It Mandatory That the Dispute Be Submitted to the National Railroad Adjustment Board When Progressed Beyond the "Property."**

The Railway Labor Act provides that disputes "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such

[1] "It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, Slocum v. Delaware, L. & W. R. Co., Order of Railway Conductors of America v. Southern Railway Company, 339 U. S. 255, 94 L. ed. 811, once that procedure has been invoked by one of the parties." Judge Brown's dissent. R. 273 and 274.

disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."[2] This the Central has done.

The Railway Labor Act further provides that the decision of the Board except as to money awards shall be final and binding.[3]

Disputes and grievances over the interpretation and application of railway labor contracts arise daily in great volume throughout the railroad industry. Consistently and faithfully since 1934, with few exceptions, the Railway unions and also the carriers have submitted such disputes to the Adjustment Board when the unions or the carriers were dissatisfied with the results of voluntary settlement "on the property." This is as it should be. This complies with the declared policy and clear mandates of the Railway Labor Act. Recently the Brotherhood of Railroad Trainmen, respondent herein, has changed this practice. In the Chicago River case and in the case at bar they have resorted to the drastic action of strike rather than the National Railroad Adjustment Board. If either carriers or unions are to be permitted to resort to economic coercion rather than orderly procedure under the Railway Labor Act, the Act will become a nullity. If the Fifth Circuit decision in our case is to stand, the relative "labor peace" in the railway industry will be fearfully disrupted. The ramifications of this decision are appalling. To permit either the carriers or the unions to resort to economic pressures—lockouts—strikes—or the like—will be to produce chaos. It would defeat the prime objective of the

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[2] 45 U. S. C., Sec. 153, First (i).

[3] 45 U. S. C., Sec. 153, First (m).

authors of the 1934 amendment to the Railway Labor Act—that objective being compulsory settlement or "arbitration" of minor disputes by the Adjustment Board.[4]

To determine the intent of Congress, let us first consider the background and legislative history of the 1934 amendment to the Railway Labor Act. Excerpts from the Legislative History are set forth in Appendix "A" of this brief.

Under federal control from 1918 to 1920 the Government established a National Adjustment Board in Washington which functioned fairly satisfactorily. Then the Railroads were returned to private ownership and the Transportation Act of 1920 was enacted. It established the United States Railroad Labor Board, which handled on a voluntary basis both major and minor disputes. Then the Railroad Labor

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[4] As stated in Judge Brown's dissent, R. 274 and 275:

"The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

"No matter how informal the proceedings might be, or how unlike lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or, more likely, make altogether unnecessary or futile the operation of this machine.

"A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination, it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function."

Act of 1926 abolished the United States Railroad Labor Board. For the settlement of "minor disputes" it provided "Boards of Adjustment shall be created by agreement——" It also established the "Board of Mediation" for "major disputes"; "minor disputes" being those involving contract application or interpretation, and "major disputes" being those involving contract creation or change. This voluntary machinery for "minor disputes" was not effective. Then as the Labor Spokesman, George Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks, said before the House Committee Hearings on the 1934 amendment:

> "That, then, presented a very serious situation, because on some roads as many as 1,000 unadjusted disputes were in existence; and the condition got so unbearable that several of these organizations went to the extent of putting a strike ballot in the hands of their employees to leave the service of the carrier unless those controversies should be settled. That brought Presidential interference, by Executive order, and the establishment of emergency boards by Presidential proclamation, and those boards undertook to bring about a disposition of the grievances.
>
> "So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, if they desire to progress them, to be decided by an adjustment board" (Appendix "A," p. 52).

Thus it is that prior to 1934 the voluntary adjustment of "minor disputes" had been unsatisfactory to labor as

well as to management. In that unsatisfactory atmosphere the 1934 amendment was passed. The Manager of the bill in the Senate, Senator Dill, described it (78 Cong. Rec. 12083):

> "The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to submit to compulsory arbitration of their [grievance] disputes. This is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed" (Appendix "A," p. 54).

In no other Act has the legislative history more clearly reflected Congressional intent than in the legislative history of the 1934 amendment. Such history shows complete unanimity of purpose to provide a compulsory settlement of "minor disputes" which could not be settled between the parties.

The chief labor spokesman said:

> "Then the machinery provides that these controversies will be handled in conference in the usual manner, hoping that they will be settled between the parties at home. If they cannot be settled, then they go to this board" (Appendix "A," p. 50). "* * * we are now ready to concede that we (labor) can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make" (Appendix "A," p. 51).

Management's spokesman said:

> "Men and management are agreed that what they want is compulsory, prompt, and equitable settlement of disputes" (Appendix "A," p. 52).

Joseph B. Eastman, Coordinator of Federal Transportation and sponsor of the 1934 amendment, unequivocally

stated that the amendment provided for compulsory settlement of minor disputes and that the provisions of the act were enforceable by injunction. (See Appendix "A," pp. 43-49).

The Co-ordinator's attorney, Mr. Carmalt, expressed a similar opinion. (See Appendix "A," pp. 48-49).

The House and Senate Committee reports characterized the amendment as providing compulsory machinery for settlement of minor disputes, as did the Senate Floor Manager, Senator Dill. (See Appendix "A," p. 54).

The Courts have likewise interpreted the 1934 Amendment as compulsory and enforceable with regard to settlement of minor disputes:

Justice Rutledge, in the **Burley** case, contrasted the settlement procedures for "major" and "minor" disputes under the 1934 Amendment as follows:

> "Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. sec. 7, Brotherhood of R. Trainmen, v. Toledo, P. & W. R. Co., 321 U. S. 50, 88 L. Ed 534, 64 S. Ct. 413, 150 A. L. R. 810; and finally to possible presidential intervention to secure adjustment. Section 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. Section 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be

had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

"**The course prescribed for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.** (Emphasis added.)

"Prior to 1934 the parties were free at all times to go to court to settle these disputes. Notwithstanding the contrary intent of the 1926 Act, each also had the power, if not the right, to defeat the intended settlement of grievances by declining to join in creating the local boards of adjustment provided for by that Act. They exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working machinery. Grievances accumulated and stagnated until the mass assumed the proportions of a major dispute. Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place. The old Mediation Board was helpless. To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board.

Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. **Each party to the dispute may submit it for decision, whether or not the other is willing,** provided he has himself discharged the initial duty of negotiation, Section 3 First (i). Rights of notice, hearing and participation or representation are given. Section 3 First (j). In some instances, judicial review and enforcement of awards are expressly provided or are contemplated. Section 3 First (p); cf. sec. 3 First (m). When this is not done, the Act purports to make the Board's decisions 'final and binding.' Section 3 First (m). (Emphasis added.)

"The procedure is in terms and purpose very different from the pre-existing system of local boards. That system was in fact and effect nothing more than one for what respondents call 'voluntary arbitration.' No dispute could be settled unless submitted by agreement of all parties. When one was submitted, deadlock was common and there was no way of escape. The Adjustment Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the pre-existing scheme." **Elgin, Joliet & Eastern R. Co. v. Burley,** 325 U. S. 711, at 725, 89 L. Ed. 1886, 65 S. Ct. 1282 (1945).

Many other cases have likewise held that the Adjustment Board procedure is mandatory.

In the **Slocum** case a dispute arose between two unions over which was entitled to certain work. After negotia-

tions "on the property" proved futile, the Railway filed a petition for a declaratory judgment in the State Court. Justice Black held that the State Court had no jurisdiction to adjudicate the dispute, stating:

> "It was to prevent such friction that the (May 20) 1926 Act provided for creation of various adjustment boards by voluntary agreements between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a National Adjustment Board composed of representatives of railroads and unions. * * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *
>
> "We hold that the jurisdiction of the Board to adjust grievances and disputes of the type here involved is exclusive." **Slocum v. Delaware, L. & W. R. Co.**, 339 U. S. 239, at 242 and 244, 94 L. ed. 795, 70 S. Ct. 577 (1950).

In a case similar to the **Slocum** case, supra, and decided the same day, Justice Black stated:

> "After the railroad had sued in the State Court, the union filed a petition for hearing and award before the Adjustment Board. The State Court nevertheless proceeded to adjudicate the dispute. Sustaining the State Court's action would invite races of diligence whenever a carrier or union preferred one forum to another. And if a carrier or a union could choose a Court instead of the Board, the other party would be deprived of the privilege conferred by Sec. 3 First (i) of the Railway Labor Act * * * which provides that after negotiations have failed 'either party' may refer

the dispute to the appropriate division of the Adjustment Board." **Order of R. C. of America v. Southern Railway Company,** 339 U. S. 255, at 256, 94 L. Ed. 811, 70 S. Ct. 585 (1950).

In many other cases this and other Courts have held that the Adjustment Board procedure is mandatory when either party is dissatisfied with the results of negotiation "on the property."[5]

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[5] *O. R. C. v. Pitney,* 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct. 322 (1946), in which two unions claimed right to supply conductors for same jobs—jurisdictional dispute—O. R. C. brought suit to enjoin Railroad from making change.

*Walters v. Chicago and N. W. Ry. Co.,* 216 F. (2) 332 (Seventh C., 1954, No Appeal):

> "Our attention is called to the fact that Section 3 First (i) provides that after the parties have failed to reach an agreement between themselves 'the dispute *may* be referred by petition of the parties or *by either party* to the appropriate division of the Adjustment Board' (our emphasis), and that if the intent had been to make submission to the Board compulsory the word 'shall' would have been used. We think this contention is met in another case decided by the Supreme Court the same day the Slocum case was decided. In this second case, Order of Railway Conductors of America v. Southern Railway Co., * * * the Court said: 'And if a carrier or a union could choose a Court instead of the Board, the other party would be deprived of the privilege * * *.'"

to go to the Board.

Congress used the word "may" because the parties might not desire to progress the dispute beyond the negotiation stage, and "arbitration" would be compulsory only if a party decided to refer the dispute to the Board.

In *Rolfes v. Dwellingham,* 198 F. (2) 591 (Eighth C., 1952), the Court maintained the "status quo ante" in a dispute to allow time for submission to the Adjustment Board, holding (p. 594):

> "The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce."

*The Chicago River and Indiana Railroad Company et al. v. Brotherhood of Railroad Trainmen et al.,* 229 Fed. (2) 926 (Seventh C.,

Thus the Courts have construed the legislative history and the 1934 Act itself as conclusive that Congress intended the Adjustment Board procedure to provide compulsory machinery for settlement of minor disputes. As is demonstrated by the cases cited above and to be cited below, the Courts have repeatedly held that neither labor nor management may resort to the Courts or to self-help for a solution of such disputes. The matter must be decided by the Board if submitted thereto by either party.

In summary, if the Adjustment Board procedure is mandatory and is to function properly, as all of the authorities hold, then certainly it is a violation of the Railway Labor Act for the union to strike to defeat such procedure pending Board action.

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1956), is being reviewed with the case at bar, and will not be discussed here. But it enjoined a strike and held the Adjustment Board procedure to be mandatory:

> "We hold this to mean that a strike in regard to such minor disputes or the Board's decisions thereon, would be illegal."

Judge Brown's dissent in the case at bar (R. 267 and 268):

> "But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a 'dispute(s)' between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *; 45 U. S. C. A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved."

Thus we face the question: "If a strike over a dispute before the Board would violate the Railway Labor Act, can a Federal Court of Equity restrain such a strike to permit orderly procedure under the Act?"

B.

**The Norris-LaGuardia Act Does Not Prohibit a Federal District Court From Enjoining a Threatened Strike Over a Dispute Under the Jurisdiction of and Pending Before the National Railroad Adjustment Board.**

In denying jurisdiction in the case at bar, the Court of Appeals majority opinion leaned heavily upon the case of **General Committee of Adjustment, etc. v. Missouri-Kansas-Texas R. Co.**, 320 U. S. 323, 88 L. Ed. 76, 64 S. Ct. 146 (1943). In that case Justice Douglas held that under the Railway Labor Act a decision of the National Mediation Board concerning bargaining representatives was not subject to court review—was not justiciable. This was a companion case to **Switchmen's Union of N. A. v. National Mediation Board**, 320 U. S. 297, 88 L. Ed. 61, 64 S. Ct. 95 (1943), with a similar holding, in which Justice Douglas recognized the existence of cases such as the one at bar when he said:

> "If the absence of jurisdiction of the federal courts meant a sacrifice or obliteration of a right which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control. That was the purport of the decisions of this Court in Texas & N. O. R. Co. v. Brotherhood of R. & S. S. Clerks, 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427, and Virginian R. Co. v. System Federation, R. E. D. 300 U. S. 515, 81 L. Ed. 789, 57 S. Ct. 592. In those cases it was apparent that but for the general jurisdiction of the federal courts there would be no remedy to enforce the statutory commands which

> Congress had written into the Railway Labor Act. The result would have been that the 'right' of collective bargaining was unsupported by any legal sanction. That would have robbed the Act of its vitality and thwarted its purpose. Such considerations are not applicable here. The Act in Sec. 2, Fourth, writes into law the 'right' of the 'majority of any craft or class of employees' to 'determine who shall be the representative of the craft or class for the purposes of this Act.'"

The "Federal courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act" (Judge Brown's dissent, R. 268).

The legislative history of the 1934 amendment to the Railway Labor Act (Appendix "A") and the following cases clearly support this conclusion.

See **Virginian Railway Company v. System Federation,** 300 U. S. 515, 81 L. Ed. 789, 57 S. Ct. 592 (1937), in which an injunction issued at the instance of the railroad union to require the railroad to recognize it and to bargain with the union as certified by the Mediation Board and not to bargain with any other union. The carrier argued that the Railway Labor Act was not mandatory and could not be enforced in a Court of Equity. It is clear that this dispute met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104 of the Norris-LaGuardia Act. The Supreme Court rejected the Norris-LaGuardia Act as a bar, Justice Stone stating (References are to pages in 300 U. S.):

> "The policy of the Transportation Act of encouraging voluntary adjustment of labor disputes, made manifest by those provisions of the Act which clearly

contemplated the moral force of public opinion as affording its ultimate sanction, was, as we have seen, abandoned by the enactment of the Railway Labor Act. Neither the purposes of the later act, as amended, nor its provisions when read, as they must be, in the light of our decision in the Brotherhood of R. & S. C. Clerks Case, 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427, supra, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction" (p. 545).

"The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved" (p. 552).

"The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders" (p. 553).

"It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of Section 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act" (p. 563).

Thus it is clear that in the **Virginian** case the United States Supreme Court did not agree with the majority opinion in the Court of Appeals in our case that there must be expressed language in the Railway Labor Act overriding the Norris-LaGuardia Act.

In **Order of Railway Conductors v. Pitney**, supra, footnote 5, involving a bankruptcy reorganization Court's power to restrain a railroad from taking conductors' work from one union and giving it to another, Justice Black, in finding no irreparable injury, said:

> "Of course, where the statute is so obviously violated that a 'sacrifice or obliteration of a right which Congress . . . created' to protect the interest of individuals or the public is clearly shown, a court of equity could, in a proper case, intervene. . . . Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute" (pp. 566 and 567 of 326 U. S.)

**Graham v. Brotherhood of Locomotive Firemen and Enginemen**, 338 U. S. 232, 94 L. Ed. 22, 70 S. Ct. 14 (1949), involved an action by negro firemen against the union. An injunction issued and was affirmed against the union forbidding unlawful discrimination toward colored non-members. The Court, through the late Justice Jackson, stated (p. 237 of 338 U. S.):

> "The respondent (Brotherhood) has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * *
>
> "But this is not a question of first impression. In Virginian Railway Co. v. System Federation, 300 U. S. 515, we held that the Norris-LaGuardia Act did not deprive Federal Courts of jurisdiction to compel com-

pliance with positive mandates of the Railway Labor Act, 45 U. S. C. A., Sec. 151 et seq., enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. * * * We adhere to the views expressed in the Virginian case.

"But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the act, which, as a whole, extends its protection solely to such disputes. * * *

"If, in spite of the Virginian, Steele and Tunstall cases,[6] * * * there remains any illusion that under the Norris-LaGuardia Act the Federal Courts are powerless to enforce these rights, we dispel it now * * *."

As Judge Brown said, the foregoing quotation from the **Graham** case completely refutes the argument of the majority opinion that had Congress intended for the Railway Labor Act to modify the Norris-LaGuardia Act, Congress would have expressly so provided. As Judge Brown also stated: "Of course, its (the majority opinion) emphasis on the prohibition of **strikes**, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden" (last sentence of footnote 5, page 270 of record).

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[6] Steele v. L. & N. R. Co., 323 U. S. 192, 89 L. Ed. 173, 65 S. Ct. 226 (1944, Justice Stone); Tunstall v. Brotherhood of Locomotive Firemen and Enginemen, 323 U. S. 210, 89 L. Ed. 187, 65 S. Ct. 235 (1944, Justice Stone).

The testimony of Labor Spokesman George Harrison emphasizes and illustrates what Justice Jackson and Judge Brown had reference to in saying that undue emphasis on the injunction prohibition of the Norris-LaGuardia Act ignores the over-all purpose of the Norris-LaGuardia Act. Mr. Harrison stated (Appendix "A," p. 51):

> Previously these labor organizations have opposed compulsory determination of their controversies, but * * * **"these minor cases that develop out of contracts that we freely make, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make."** (Emphasis added.)

Clearly it was never contemplated by Congress that Norris-LaGuardia would prohibit the appropriate enforcement of compulsory statutory arbitration. Such a situation has no relation to the purpose of Norris-LaGuardia, which is to put organized labor on an equal basis for collective bargaining and representing the employees. The case at bar involves the enjoining of a strike in order to permit the Adjustment Board to settle a controversy over a contract "that we (unions) make freely, and which we have the right and privilege of entering into and have something to say about their terms." Certainly to hold that such an injunction is prohibited by Norris-LaGuardia is to ignore "the wide character of controversies protected and remedies forbidden."

In **Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks**, 281 U. S. 548, 74 L. Ed. 1034, 50 S. Ct. 427 (1930), **under the 1926 Railway Labor Act**, this Court affirmed a decree enjoining a railroad company from interfering with, influencing or

coercing clerical employees of the company in the matter of their organization and designation of representatives for the purposes set forth in the Railway Labor Act. Speaking for the Court, Chief Justice Hughes stated (p. 567 of 281 U. S.):

> "It is thus apparent that Congress, in the legislation of 1926, while elaborating a plan for amicable adjustments and voluntary arbitration of disputes between common carriers and their employees, thought it necessary to impose, and did impose, certain definite obligations enforceable by judicial proceedings. * * *
>
> "While an affirmative declaration of duty contained in a legislative enactment may be of imperfect obligation because not enforceable in terms, a definite statutory prohibition of conduct which would thwart the declared purpose of the legislation cannot be disregarded. . . .
>
> "The absence of penalty is not controlling. The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. In the case of the statute in question, there is an absence of penalty, in the sense of specially prescribed punishment, with respect to the arbitral awards and the prohibition of change in conditions pending the investigation and report of an emergency board, but in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists. Marbury v. Madison, 1 Cranch. 137, 162, 163, 2 L. Ed. 60, 68, 69."

**Brotherhood of Railroad Trainmen v. Howard,** 343 U. S. 768, 96 L. Ed. 1283, 72 S. Ct. 1022 (1952), was a racial

discrimination case, the Court (Justice Black) saying (p. 774):

> "Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive powers (to enforce the Railway Labor Act) notwithstanding the provisions of the Norris-LaGuardia Act."

Despite the Norris-LaGuardia Act, the Circuit and District Courts in other cases have recognized the justification of invoking equity jurisdiction to enforce the obvious mandates of the Railway Labor Act and/or to prevent irreparable injury.

In **New York Central Railroad Company v. Brotherhood of Railroad Trainmen et al.**, 140 F. Supp. 273 (N. D. Ohio, 1956), the Court enjoined a railroad union from striking over the closing of a railroad yard in order to prevent irreparable injury to the public and to the railroad, citing the **Virginian Railway** case, supra.

In **Railroad Yardmasters of America v. Pennsylvania Railroad Company**, 224 F. (2) 226 (3rd C. 1955), the Court held that the Norris-LaGuardia Act did not prevent a Federal District Court from issuing a preliminary injunction, enjoining a threatened change in the working agreement in violation of the Railway Labor Act.

The Fourth Circuit held that the District Court should have exercised its injunctive powers to compel a carrier to bargain in good faith, citing the Virginian case. **Brotherhood, etc., v. Atlantic Coast Line R. Co.**, 201 F. (2) 36 (4th C. 1953).

In **Rolfes v. Dwellingham**, supra, Footnote 5, the Eighth Circuit recognized both the necessity and power of a Federal Court of Equity to enforce the positive mandates of the Railway Labor Act by maintaining the "status quo ante" pending the orderly functioning of the Railway Labor Act (pp. 593, 594):

"In this case the trial court exercised its equity powers only to preserve the status quo ante of the waiters in charge in relation to the railroad and the dining car steward and granted injunctive relief 'in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act.' It limited its injunction strictly for the purpose of affording opportunity for the administrative Board to function as contemplated by the Act. * * *

"Also we consider the decisions of the Supreme Court in Graham v. Brotherhood of Locomotive Firemen and Enginemen * * *; Virginian R. Co. v. System Fed. No. 40 * * *; Steele v. L. & N. R. Co. * * *; and Tunstall v. Brotherhood of Locomotive Firemen and Enginemen * * *, are equally conclusive that the Norris-LaGuardia Act does not deprive the Federal Courts of power to issue such an injunction as has been issued here in aid of the Administrative Board and to preserve the rights of waiters-in-charge to resort to the administrative procedure provided by Congress under the Railway Labor Act."

The District Court in the case at bar did exactly what the District Court in the Rolfes case did—merely maintained the *status quo ante* to permit the functioning of the Adjustment Board.

The Seventh Circuit, in **M-K-T Railroad Co. v. Brotherhood of Ry. & S. S. Clerks**, 188 F. (2) 302 (7th C., no record of appeal, 1951), on complaint of the carrier enjoined conflicting awards of the National Railroad Adjustment Board and maintained the status quo pending the solution of the dispute by the Adjustment Board.

Other cases of similar import are set out in the footnote.[7]

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[7] Judge Brown's dissent in the case at bar:

"Of course the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on

Justice Rutledge highlights the enforceability of the duties under the Act:

"Thus, one of the statute's primary commands, **judicially enforceable,** is found in the repeated declaration of a duty upon all parties to negotiate for its settle-

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the parties, railway management and labor alike, and a Court, by injunction, can compel the parties to carry out and effectuate its aims. Texas and N. O. R. Co. v. Brotherhood, * * *; Virginian Railroad Co. v. System Federation, supra; Order of Ry. Conductors v. Pitney; E. J. & E. R. Co. v. Burley; Brotherhood of R. Trainmen v. Howard, * * *. The National Railway Labor Act is not for labor alone. To be sure, it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the train runs both ways simultaneously, and when equity can compel a Railroad to comply, R. & N. O. R. Co. v. Brotherhood, Virginian R. Co. v. System Federation, supra, so, too, may it compel obedience by unions. Brotherhood of Trainmen v. Howard; Graham v. Brotherhood of Locomotive Firemen & Enginemen, supra.

"It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, Slocum v. Delaware, L. & W. R. Co., Order of Railway Conductors of America v. Southern Railway Co., 339 U. S. 255, 94 L. Ed. 811, 70 S. Ct. 585, once that procedure has been invoked by one of the parties."

In *Textile Workers Union of America v. Alco Manufacturing Co.*, the North Carolina District Court held that the Norris-LaGuardia Act did not prohibit a mandatory injunction enforcing against an employer a new right of action created under the Taft-Hartley Law. 94 F. Supp. 626 (1950, no appeal).

In *United States v. Brotherhood of Locomotive Engineers* (1948, D. C.), 79 F. Supp. 485, cert. den. 335 U. S. 867, 93 L. Ed. 412, 69 S. Ct. 137, Judge Goldsboro in enjoining a railroad strike at the instance of the Government held that the Norris-LaGuardia Act should not be taken literally.

In the case of *Railway Employees Coop. Assn. et al. v. A. B. & C. R. Co.*, 22 F. Supp. 510 (no appeal) (Ga., 1938), the District Court enjoined a railroad from interfering in the selection of a bargaining representative and from complying with an agreement with another union *pending a decision of the controversy by the National Mediation Board.* He held that the Railway Labor Act created property rights which will be protected by a court of equity despite the Norris-LaGuardia Act.

ment. * * * At successive stages of the statutory procedure other duties are imposed." Note 12, p. 721 of the **Burley** case, supra.

In a very recent case, **Local 19, Warehouse, etc., v. Buckeye Cotton Oil Co.**, 236 F. (2) 776 (6th Cir., 1956), the Sixth Circuit held that the Norris-LaGuardia Act did not prohibit issuance of injunction to compel arbitration of dispute involving a labor contract. The contract provided for arbitration, as does the Railway Labor Act. The Railway Labor Act requires "arbitration" before the Adjustment Board. The **Buckeye** case contains an exhaustive citation of authorities, including the **Virginian** and **Graham** cases.

In the **Chicago River and Indiana Railroad Company** case, supra, the Seventh Circuit in sustaining the enjoining of a strike stated with unequivocal clarity (229 F. [2] 932):

"Accordingly, the 1934 amendments to the Railway Labor Act were enacted. They provided *inter alia* for compulsory and determinative adjustment of minor disputes. As we have already seen, the compulsory features of the Railway Labor Act are enforceable by injunctions issued by the federal district courts. We cannot presume that Congress, in so amending the Railway Labor Act in 1934, intended that such an injunction could not issue unless compliance was first had with the Act of 1932 dealing with the general subject of injunctions in labor disputes.

"The Railway Labor Act, as amended in 1934, embodies a complete plan for avoiding any interruption to commerce or to the operation of any carrier engaged therein. It is directed to the needs of the railroad industry, employers and employees alike, having in mind the paramount interest of the public. It does not call for the aid of, or submit to, the limitations of

the Norris-LaGuardia Act. Indeed, the provisions in regard to injunctions prohibiting strikes in labor disputes, as contained in the Norris-LaGuardia Act, if controlling in a situation such as we have here, arising under the Railway Labor Act, would practically render the compulsory features of the latter act nugatory. We are unimpressed with the argument of Trainmen's counsel that damages suffered by the many persons who might be injured by such a strike could be compensated in private suits brought therefor. A right to relief by suit for damages in such a situation would be an illusory remedy and a poor protection of the public interest. The effect of a strike against the railroads of the nation requires the expeditious intervention of a court to safeguard that interest. This can be accomplished only by the prompt employment of a court's equitable powers, primarily its injunctive power. The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention contained in that act to the effect that the Norris-LaGuardia Act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia Act does not apply to the case at bar."

The above cases are clear authority that the Norris-LaGuardia Act does not hinder a Federal District Court in protecting proper procedure under the Railway Labor Act, and in a proper case enjoining a strike.

There is no difficulty reconciling the Norris-LaGuardia Act with the Railway Labor Act. As was so aptly expressed in Judge Brown's dissent (R. 268 and 269):

> "And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course

to be followed and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

"Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

"This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, deliberate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has found dominant and controlling.

"In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. Virginian Railway Co. v. System Federation; Graham v. Brotherhood of Locomotive Firemen and Enginemen."

Also the majority opinion in seeking an express provision of the Railway Labor Act which withdrew the application of the Norris-LaGuardia Act is also diametrically

in conflict with the cardinal principle of statutory construction, enunciated by this Court in **Cook County National Bank v. United States**, 107 U. S. 445, 27 L. Ed. 537, 2 S. Ct. 561 (1883), in which it was stated:

> "A law embracing an entire subject, dealing with it in all of its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

We submit that the foregoing authorities lead to the inescapable conclusion that by congressional mandate the Adjustment Board procedure is compulsory, and that such clear mandates of Congress will be enforced by Federal District Courts sitting in equity.

It is, therefore, respectfully submitted that the opinion of the Court of Appeals for the Fifth Circuit in this case should be reversed and the cause remanded for further proceedings consistent with the opinion of this Court.

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**Certificate of Service.**

I, John B. Miller, Counsel for Petitioner, do hereby certify that I have served a copy of the within and foregoing brief upon Counsel of Record for Respondents by first-class mail with proper postage affixed to their office addresses.

This 31 day of December, 1956.

.....

John B. Miller.

## APPENDIX "A" TO BRIEF OF PETITIONER, CENTRAL OF GEORGIA RAILWAY COMPANY.

### Legislative History of 1934 Amendment to Railway Labor Act.

The Legislative History of the (National) Railway Labor Act Amendment of 1934[1] makes it clear that the amendment was designed to make the National Railroad Adjustment Board procedure compulsory in nature when either the carrier or the employees desired to progress minor disputes beyond the "chief operating officer of the carrier designated to handle such disputes." The following abstracts establish beyond doubt that Congress intended the Adjustment Board procedure to be compulsory (References are to the pages of the transcripts of the respective hearings):

#### JOSEPH B. EASTMAN.

Joseph B. Eastman, Federal Coordinator of Federal Transportation and prime author and supporter of the 1934 Amendment, testified before the Senate Committee (Senate Hearing, p. 15):

The Chairman (Senator Dill of Washington). "There is no compulsory method of having these Boards created?" (Referring to the 1926 law.)

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[1] Hearings before the Committee on Interstate Commerce—United States Senate—73rd Congress, 2nd Session on S. 3266; Hearings before the Committee on Interstate and Foreign Commerce—House of Representatives—73rd Congress, 2nd Session on H. R. 7650 (and H. R. 9689); Report of Senate Committee on Interstate Commerce upon S. 3266 of May 10, 1934 (Senate Report No. 1065, 73rd Congress, 2nd Session) and Report of House Committee on Interstate and Foreign Commerce upon H. R. 9861 of June 11, 1934 (House Report No. 1944, 73rd Congress, 2nd Session) and comment on the floors of Congress.

Mr. Eastman. "No."

The Chairman. "Is there in the new law?"

Mr. Eastman. "Yes."

The Chairman. "Is it compulsory?"

Mr. Eastman. (Senate Hearing p. 16) "The new law provides definitely for a National Board of Adjustment as I shall explain. * * *

Mr. Eastman. "Yes.

"The National Adjustment Board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided between the two sides, disagree, they must call in a neutral member appointed by the Mediation Board to decide the case. * * *

"The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill. * * *"

At Senate Hearings, page 155, the Chairman asked:

"I want to ask you a question, there. The theory, as I understand, of these National Boards, is that if they are in existence and compulsory and their orders are subject to enforcement, it will result in the establishment of the Regional Boards and the Local Boards more readily than they are now established; otherwise your National Boards will be pretty badly loaded up, will they not?" (This question clearly showed the Chairman's interpretation of the compulsory nature of the 1934 amendment and Mr. Eastman's answer thereto was consistent with this interpretation.)

Mr. Eastman's testimony before the House committee was similar to his testimony before the Senate Committee,

but was even more explicit as to the compulsory nature of the Board procedure (House Hearings p. 43):

"I want to make it clear that the principle behind that Section 2 (of H. R. 9689) is exactly the same principle that is now enunciated in the present Section 2 of the present Railway Labor Act. However, so far as the present Act is concerned, there is no provision for the enforcement of that principle and it has not, in fact, been enforced." (House Hearings p. 43.) (Here again it shows that Mr. Eastman intended the Amendment to be enforceable.)

"All that we are undertaking to do is translate the principle which is now enunciated in the present Railway Labor Act into definite, specific provisions, free from ambiguities **and with adequate provisions for their enforcement.** The new Section 2 is in direct line with action which has been taken by Congress on three different occasions. It seeks only to give clarity, vitality, and positive sanctions to what is now, as far as the Railway Labor Act is concerned, no more than a pious wish * * *" (House Hearings, p. 43). (Emphasis added.)

"The bill before you, H. R. 9689, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a National Adjustment Board to which unadjusted disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions may be referred. Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation. The National Adjustment Board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided be-

tween the two sides, disagree, they must call in a neutral member appointed by the Mediation Board to decide the case. The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill" (House Hearings, p. 47). * * *

At page 55 of the House Hearings, Congressman Cooper of Ohio was questioning Commissioner Eastman as follows:

Mr. Cooper. "Well, what I had in mind was this: There will probably be many disputes that might be settled between the employees and the carriers without them being carried to this National Board of Adjustment."

Commissioner Eastman. "Oh; absolutely."

Mr. Cooper. "And this is only in the last resort."

Commissioner Eastman. "That is right."

Mr. Cooper. "In case the carriers and employees cannot get together in conferences then, as a last resort, it goes to one of these four divisions of the National Board of Adjustment for settlement."

Commissioner Eastman. "That is correct" (House Hearings, p. 55).

This colloquy shows that if the parties cannot settle the dispute "on the property" "as a last resort it goes" to the Board—it is compulsory that it goes there.

Congressman Pettengill of Indiana questioned Mr. Eastman at page 58:

Mr. Pettengill. (House Hearing, p. 58) "And, this Act does not make a matter of agreeing to arbitrate (before the National Railroad Adjustment Board) as a matter of discretion? It makes it a matter of duty on the part of the parties to this dispute."

Commissioner Eastman. "Yes; and it is my understanding that the employees in the case of these minor griev-

ances—and that is all that can be dealt with by the Adjustment Board—are entirely agreeable to those provisions of the law.

"I think that it is a very important concession on their part. It does not go to the major issues with reference to wages and working rules; but to all disputes except working rules and wages."

This colloquy likewise shows beyond doubt that the Congressmen understood the bill to make it "a matter of duty" and not "a matter of discretion" to go to the Board as a last resort.

Then the Hearing goes on to discuss whether or not the Act, in effect, prevents strikes over disputes involving these minor issues. Congressman Cooper questioned whether employees should give up the right to strike over such minor disputes. Commissioner Eastman stated (House Hearing, p. 60): "Well, as I say, you have exactly similar provisions in the present Labor Act with respect to decisions by Adjustment Boards (that is that the decision shall be final and binding) and where they agree to arbitration, **and this law is in effect an agreement on the part of the parties to arbitrate all of these minor disputes.**" (Emphasis added.)

The Chairman (Mr. Sam Rayburn). "Was that not one of the reasons, to try to keep down strikes to get people together?"

Commissioner Eastman. "Yes. It is a very important part of it. The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing."

Congressman Wolverton asks this question. (House Hearings p. 61):

"Is there any provision in this bill that would enable the Court to obtain an injunction against a labor organization which is dissatisfied with the final decree and refuses to comply with it?"

Commissioner Eastman. "Well, I am not able to give you an answer to that. That is a legal question, to be frank with you, that I have not gone into."

Mr. Wolverton. **"It would seem to me that the provisions or language of the bill itself would answer that question. And is it contrary to public policy to have such a provision in there?"** (Emphasis added.)

Commissioner Eastman. "Well, it is my opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues" (p. 61).

Continuing with a discussion of whether or not an injunction should issue to enforce an award of the Adjustment Board, Mr. Carmalt, a draftsman of the bill and Attorney for Commissioner Eastman, stated that it was his opinion under the proposed amendment that an injunction would issue to enforce the award. Mr. Carmalt said:

"The original House Bill on this question, was drawn by the employees and the language was, I think, brought directly over in the same form that the employees presented it.

"The question has not arisen therefore, before this morning, and I am more or less thinking out loud in connection with it, because of that fact, but it has seemed to me that the implication lay, from the form of the bill, that a strike on account of these minor grievances would not be permitted and might be enjoined (House Hearings p. 62).

"My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial Board" (House Hearings p. 63).

Mr. Wolverton. "Do you think that the language that has been referred to by Mr. Eastman, as conferring this absolution, so to speak, so far as an employee is con-

cerned, would provide equal protection to the organization itself?"

Mr. Carmalt. "No; I think this injunction would run rather as against a strike. There is no other means of resisting the order. But, as to the individual quitting, I think the absolution would be effective" (House Hearings p. 63).

The above makes it abundantly clear that "minor disputes" as a last resort must go to the Board and a strike over such disputes would be enjoined.

## GEORGE M. HARRISON.

George M. Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks, appeared before the Senate and House Committees as Chairman of the Legislative Committee of the Railway Labor Executive's Association, "speaking for the 21 standard railway labor organizations," including the Brotherhood of Railroad Trainmen, Respondent in this proceeding. Mr. Harrison was and is an outstanding labor's spokesman and a strong advocate of the amendments. He discussed the experience of voluntary national boards of adjustment under the Transportation Act of 1920 and voluntary regional boards of adjustment as well as national boards of adjustment under the Railway Labor Act of 1926. Then before the Senate Committee, referring to the 1934 amendment, he said:

"Now this law is designed by the establishment of the National Board—this bill, S. 3266, is designed by the establishment of a national Board to overcome our experiences and the difficulties that developed out of that situation. The language suggests first, that there shall be a National Board established; that means that it is mandatory and must be set up. * * * (Senate Hearing, p. 30).

"The personnel of the Board will be 18 representatives of the employees and 18 of the railroads. In the event

either party fails to select a representative, the Secretary of Labor will appoint them. That Board will have jurisdiction over all controversies growing out of grievances or out of interpretation and/or application of rules and agreements. * * * (Senate Hearings, p. 31).

"Then the machinery provides that these controversies will be handled in conference in the usual manner, hoping that they will be settled between the parties at home. If they cannot be settled, **then they go to this board**" (Senate Hearing, p. 31).

"Then we provided, in order to overcome our past experience, that the decision when made by the Adjustment Board shall be enforceable. We have had several instances where, even though the law provides that the agreements setting up the Board shall provide for the acceptance of the decision by the parties, that the decisions haven't been obeyed" (Senate Hearing, p. 32).

Mr. Harrison continued: "Most of the boards that have been established under the present law have been unable to reach a decision. They have deadlocked on any number of cases. As a result of that there was fast growing up in our industry a serious condition that might very well develop into a substantial interruption of Interstate Commerce, the very thing the law provided machinery to minimize. * * * Grievances are instituted against railroad officers' actions, and we are willing to take our chance with this National Board because we believe, out of our experience, that the National Board is the best and most efficient method of getting a determination of these many controversies that arise on these railroads between the officers and the employees" (Senate Hearing p. 33).

Mr. Harrison. "We have had experience for 14 years under these boards, and we hope that the committee will give us this National Board, because if it is not approved and put into law, we will be unable to work out satisfactory machinery by mutual agreement. The only reason we will be able to agree on the other machinery is because we

have this board set up by law that we can go to if we can't get an agreement on something else. It is a very troublesome problem and I just want to make this observation: **These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.**" (Emphasis added.) (Senate Hearing, pp. 34 and 35.)

"**I just want to tie this tail onto that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give up that right, because we only give up that right because we feel that we will get a measure of justice by this machinery that we suggest here.**" (Emphasis added.) (Senate Hearing, p. 35).

Mr. George M. Harrison in his supplemental written statement filed with the Senate Committee had this to say, printed at page 167 of the report:

"**Brought face to face, finally, with the prospect of compulsory settlement of grievance disputes,** railway managements have urged upon the committee the desirability of regional boards of adjustment instead of a National Board." (Emphasis added.)

George M. Harrison again gave similar testimony before the House Committee. He discussed the history of labor controversies in the railroad industry and in discussing disposition of the grievances under the Railway Labor Act of 1926 he stated (House Hearings, p. 81):

"That, then, presented a very serious situation, because on some roads as many as 1000 unadjusted disputes were in existence; and the condition got so unbearable that several of these organizations went to the extent of putting a strike ballot in the hands of their employees to leave the services of the carrier unless these controversies should be settled. That brought Presidential interference, by Executive order, and the establishment of emergency boards by Presidential proclamation, and those boards undertook to bring about a disposition of these grievances.

"So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, if they desire to protest them, to be decided by an adjustment board * * *" (House Hearings, pp. 81 and 82).

So we see that George Harrison, labor's spokesman, recognized the compulsory nature of the Board procedure and advocated it as a contribution of labor.

## M. W. CLEMENT.

Mr. M. W. Clement, Chairman of the Committee of the railroads delegated to deal with the proposed amendments to the Railway Labor Act, testified before the Senate Committee:

"**Men and management are agreed that what they want is compulsory, prompt and equitable settlement of disputes.** How is this best arrived at? None of the things proposed in this bill is new. We have had National Boards, both in the Boards of Adjustment during the Government administration of railroads and in the United

States Labor Board. We have had regional boards. We have had system boards. We have had President's emergency boards, and we have had arbitration boards." (Emphasis added.) (Senate Hearings, p. 67.)

Then Mr. Clement went on to argue against National Boards. Mr. Clement continued: "When men and management sat down eight years ago, neither side was willing to write into that Act compulsion. We have experienced the acts for eight years, and both sides are now willing to sit down together and write in compulsion. That is the defect of the present act" (Senate Hearings, p. 69).

Thus it is clear that the carriers also interpreted the amendment as providing a compulsory disposition of minor disputes.

Thomas P. O'Brien, representing the International Brotherhood of Teamsters, also recognized that the Board procedure would be compulsory (House Hearings, p. 118).

The Senate and House Committees clearly accepted the foregoing interpretation of the compulsory and enforceable nature of the Board procedure.

## SENATE COMMITTEE REPORT.

Thus, the Senate Report stated:

"Both representatives of the carriers and of the employees agree that the setting up of boards for the settlement of disputes should be made compulsory, when necessary. Representatives of the carriers proposed that the setting up of regional boards be made compulsory; representatives of most of the employees insisted that the setting up of the National Board of Adjustment with four divisions be made compulsory" (Senate Report No. 1065 [73rd Congress, 2d Sess.], pp. 1-2).

## HOUSE COMMITTEE REPORT.

The House Report stated:

"7. The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances,' which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions. The present Railway Labor Act provides for the establishment of boards of adjustment by agreement. In many instances, however, the carriers and the employees have been unable to reach agreements to establish such boards.

"This bill, therefore, provides for the establishment of a National Board of Adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties" (House Report No. 1944, 73rd Cong., 2d Sess., pp. 2-3).

The House Report also stated (at p. 4) that if the parties should agree on voluntary machinery to substitute for the National Railroad Adjustment Board, "then the parties are exempt from the jurisdiction of this National (Railroad Adjustment) Board."

## FLOOR OF CONGRESS.

On the floor of Congress the bill was described as providing for compulsory settlement of disputes:

Senator Dill (78 Cong. Rec. 12083):

"The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to submit to compulsory arbitration of their (minor) disputes. That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed."

FILED
JAN 25 1957
JOHN T. FEY, Clerk

# In The Supreme Court Of The United States

**October Term, 1956**

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## Case No. 84

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CENTRAL OF GEORGIA RAILWAY CO.,
*Petitioner,*

*v.*

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,
*Respondents*

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On Writ Of Certiorari To The United States Court Of Appeals
For The Fifth Circuit

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## RESPONDENTS' BRIEF ON THE MERITS

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## RESPONDENTS' BRIEF ON THE MERITS

## *INDEX*


*Page*

A. Federal Statutes Involved ---------- 1

B. The Question Presented ---------- 2

C. Statement of the Case ---------- 3

D. The Argument ---------- 7

Summary ---------- 7

Point One—The Injunction Violated the Norris-LaGuardia Act ---------- 10

Point Two—The Railway Labor Act, as amended, did not repeal the Norris-LaGuardia Act ---------- 24

Point Three—The Railway Labor Act, as amended, does not authorize injunction as here ---------- 31

Point Four—The Injunction here violated the purpose of the Railway Labor Act and the Norris-LaGuardia Act-- 35

E. Conclusion ---------- 36

F. Appendix ---------- 37

## TABLE OF AUTHORITIES


Cases — Page

*Alcoa S. S. Co. v. McMahon* (CA2) 173 F2d 567 (Cert. Den. 338 US 821, 94 L ed 498, 70 S Ct. 65). ----- 22

*American Steel Foundries v. Tri-City Central Trades Council*, 257 US 184, 66 L ed 189, 42 S Ct 72 ---- 26

*Brotherhood of Railroad Trainmen v. Howard*, 348 US 768, 96 L ed 1283, 72 S Ct 1022 ---------- 16

*Brotherhood of Railway and S. S. Clerks v. Atlantic Coast Line Ry. Co.* (CA4) 201 F2d 36 ---------- 16

*Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Ry. Co.*, 321 US 50, 88 L ed 534, 64 S Ct 413 ---------- 14, 25

*Carter v. Herrin Motor Freight Lines*, (CA5) 131 F2d 557 ---------- 11, 21

*Chicago River and Indiana Railroad Company et al. v Brotherhood of Railroad Trainmen et al.*, (CA7) 229 F2d 926 ---------- 15, 18, 34

*Cook County National Bank v. United States*, 107 US 445, 27 L ed 537, 2 S Ct 561 ---------- 18

*Donnelly Garment Co. v. Dubinsky*, (CA8) 154 F2d 38-- 21

*East Texas Motor Freight Lines v. Teamsters*, (CA5) 163 F2d 10 ---------- 23

*Elgin E. J. Ry Co., v. Burley*, 325 US 711, 89 L ed 1886, 65 S Ct. 1282 ---------- 17

*General Committee of Adjustment v. Missouri-Kansas-Texas Ry. Co.*, 320 US 323, 88 L ed 76, 64 S Ct 146 ---------- 34

*Graham v. Brotherhood of Locomotive Firemen and Enginmen,* 338 US 232, 94 L ed 1283, 72 S Ct 1022 ---------- 15, 25

*Greene v. Obergefell* (CADC) 121 F2d 46, (Cert. Den. 314 US 637, 86 L ed 511, 62 S Ct 72 ---------- 21

*Lee Way Motor Freight Lines v. Keystone Freight Lines,* (CA10), 126 F2d 931, (Cert. Den. 317 US 645. 87 L ed 519, 63 S Ct 37) ---------- 23

*Local* 19, *Warehouse, etc. v. Buckeye Cotton Oil Co.,* (CA6), 236 F2d 776 ---------- 18

*Milk Wagon Drivers Union, Local No.* 753, *et al. v. Lake Valley Farm Products, Inc.,* 311 US 91, 85 L ed 63, 61 S Ct 122 ---------- 22

*M. I. Mead, Inc. v. International Brotherhood,* (CA1) 217 F2d 6 ---------- 13, 24

*Missouri, Kansas, Texas Ry. v. Brotherhood of S. S. Clerks,* (CA7) 188 F2d 302 ---------- 17

*Moore v. Illinois Central Ry. Co.,* 312 US 630, 85 L ed 1089, 61 S Ct 754 ---------- 33

*New Negro Alliance v. Sanitary Grocery Co.,* 303 US 552, 82 L ed 1012, 58 S Ct 270 ---------- 13

*New York Central Ry. Co., v. Brotherhood of Railroad Trainmen,* 140 Fed. Supp. 273 ---------- 16

*Order of Railway Conductors of America v. Southern Ry. Co.,* 339 US 255, 94 L ed 811, 70 S Ct 585 ------- 23

*Order of Railway Conductors v. Pitney,* 326 US 561, 90 L ed 318, 66 S Ct 322 ---------- 15, 23, 33

*Railway Employees' Co-op Association v. A. B. & C. Ry. Co.,* 22 F Supp. 510 ---------- 17

*Railroad Yardmasters of America v. Pennsylvania Ry. Co.* (CA3) 224 F2d 226 ---------- 16

*Rolfes v. Dwellingham,* (CA8) 198 F2d 591 -------- 17

*Slocum v. D. L. & W. Ry.,* 339 US 239, 94 L ed 755, 70 S Ct 577 ---------- 23, 33

*Steele v. L. & N. Ry. Co.,* 323 US 192, 89 L ed. 173, 65 S Ct 226 ---------- 16, 23

*Switchmen's Union of North America v. National Mediation Board,* 320 US 297, 88 L ed 61, 64 S Ct 95 - 15, 23

*Texas and New Orleans Railroad Co., v. Brotherhood of Railway and Steamship Clerks,* 281 US 548, 74 L ed 1034, 50 S Ct 427 ---------- 16

*Textile Workers Union of America v. Aleo Manufacturing Co.,* 94 Fed. Supp. 626 ---------- 17

*Third Avenue Transit v. Quill,* (CA2), 192 F2d 971 - 12, 22

*Tunstal v. Brotherhood of L. F. & E.,* 323 US 210 89 L ed 187, 65 S Ct 235 ---------- 16, 23

*United States v. B. L. E.,* 79 F. Supp. 485, 174 F 2d 160 (CCA DC) (Cert. Den. 335 US 867, 93 L ed 412, 69 S Ct 137) ---------- 17

*Virginian Railroad v. System Federation,* 300 US 515, 81 L ed 789, 57 S Ct 592 ---------- 15, 17, 30, 31

*Washington Terminal v. Boswell,* (CADC), 124 F2d 235, aff. 319 US 723, 87 L ed 1694, 63 S Ct 1430 ------ 30

*Wilson & Co. v. Birl,* (CA3), 105 F2d 948 -- 12, 20, 21, 23

## *STATUTES*


NORRIS-LAGUARDIA ACT

Sec. 101 (29 USC, Sec. 101) ---------- 10

Sec. 102 (29 USC, Sec. 102) ---------- 6, 10, 35

Sec. 104 (29 USC, Sec. 104) -- 1, 8, 11, 12, 13, 14, 15, 16, 17, 19, 21, 22

Sec. 105 (29 USC, Sec. 105) ---------- 2

Sec. 107 (29 USC, Sec. 107) -- 8, 14, 18, 19, 21, 23

Sec. 108 (29 USC, Sec. 108) ---------- 14, 23, 25

Sec. 109 (29 USC, Sec. 109) ---------- 14, 19, 23

RAILWAY LABOR ACT

Sec. 2 (45 USC, Sec. 152) ---------- 35

Sec. 6 (45 USC, Sec 156) ---------- 14

LEGISLATIVE HISTORY OF RAILWAY LABOR ACT

Senate Committee hearings on S. 2306, 69th Congress ---------- 26

House Committee Hearings on H.R. 7650, 73rd Congress -- 32, 33, 38, 40, 41, 42, 43, 44

Senate Committee Hearings on S. 3266, 73rd Congress ---------- 32, 37, 38, 39, 40

House Report No. 1944 on H.R. 7650, 73rd Congress ---------- 41

Senate Report No. 1065 on S. 3266, 73rd Congress ---------- 38, 40

Senate Committee Hearings on S. 3463, 81st Congress ---------- 28, 29, 45, 46, 47

## A. FEDERAL STATUTES INVOLVED

In addition to those federal statutes specified by petitioner we add these:

Sec. 104 in full of the Norris-LaGuardia Act.

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Section 103 of this title. Mar. 23, 1932, c. 90, Sec. 4, 47 Stat. 70."

Sec. 105 of the Norris-LaGuardia Act.

"No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in Section 104 of this title. Mar. 23, 1932, c. 90, Sec. 5, 47 Stat. 71."

## B. THE QUESTION PRESENTED

Respondents disagree with the petitioner's statement of the questions presented; and say that applied to the facts, the question is whether the Court of Appeals was right in overturning the order of the District Court enjoining a threatened strike of certain railroad employees, in holding that the injunction was in violation of the Norris-LaGuardia Act under the circumstances presented in the record, and in ordering the dismissal of the suit for want of jurisdiction.[1] While the Court of Appeals said

> "In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or im-

1. See also statement of the question presented at page 3 of respondents' brief in opposition to the petition for certiorari; and motion to dismiss filed in the District Court at page 88 of the record.

pliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages."

it nevertheless went on to decide several other issues as well in respondents' favor. Respondents say said issues were all correctly decided.

## C. STATEMENT OF THE CASE

### The Complaint, The Hearing, And The Injunction

Respondents do not accept petitioner's statement of the case. We state it thus:

The record shows that the District Court enjoined a threatened strike on petitioner's railway (R. 237); and that the Court of Appeals, reversing, held that respondents' motion to dismiss should have been granted and that the District Court had exceeded its jurisdiction in the issuance of the injunction.

Both the complaint (R. 3) and injunction (R. 237) were directed against a threatened strike and picketing by certain of petitioner's employees. The strike had been threatened in support of respondents' demand for a new wage rule relating to the coupling of air, signal and steam hoses on the trains on petitioner's property. The demand for the new rule, under Section 6 of the Railway Labor Act, was served on the carrier on November 28, 1953 (R. 36). It was not negotiated on the property in good faith but was litigated in the state courts, and mediated under the auspices of the National Mediation Board for 14 months when finally sometime between January 17, 1955, and January 31, 1955, the carrier undertook to checkmate respondents' move by filing an ex parte submission with the National Railroad Adjustment Board; and on February 23, 1955, petitioner instituted the present litigation (R. 3).

The employees had filed no time claims or grievances in connection with the dispute.

In resisting the demands of its employees the carrier asserted the claim that a new rule was not in order as the old rule somehow was permanent and forever binding. The old rule had been established by what is known as the Cheney Award, which was rendered by an arbitrator incidental to the national wage settlement of May 25, 1951. The award became a component part of the national wage settlement, and all of it was subject to a specified moratorium which expired on October 1, 1953.

Petitioner at no time has claimed that there was any question as to the meaning or intent of the award other than its supposed permanency.

Contrary to what is stated on page 10 of petitioner's brief it is *NOT* taken for granted that the dispute is properly before the National Railroad Adjustment Board and within the Board's exclusive jurisdiction. This unfounded assumption runs throughout its brief. That it had no jurisdiction whatever will be treated later in respondents' brief.

In passing, it should be noted that the state court litigation, to which petitioner refers, sought to enjoin the threatened strike and to obtain a declaration that the Cheney Award was forever unchangeable; and that the trial court ruled in respondents' favor on the merits and was reversed by the Supreme Court on grounds of lack of jurisdiction.

The Federal Court complaint, again seeking to enjoin the strike, is voluminous. It includes many wage agreements, the Cheney Award, the opinion of the Georgia Supreme Court and the ex parte submission to the Adjustment Board by the carrier.

Respondents' motion to dismiss (R. 88) the Federal Court complaint and its answer thereto were predicated upon the following grounds.

1. Failure to state a claim upon which relief could be granted;

2. Lack of jurisdiction of the subject matter;

3. Lack of jurisdiction because of carrier's failure to exhaust its administrative remedies; and

4. The complaint on its face shows circumstances which establish lack of jurisdiction under the Norris-LaGuardia Act for the sole relief sought; viz, the issuance of an injunction.

Upon hearing the injunction was granted notwithstanding the fact that no evidence whatever was produced to show any threatened or actual violence, any resort to police protection, any need therefor, or any inadequate police protection.

The court overruled each and every ground of the motion (R. 89) and granted the injunction (R. 237)[2] all of which respondents contend constituted error.

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2. The injunction provided: "Pending further order of this Court and pending a final hearing in this case, the Defendants in this cause and each of them, their agents, representatives and all parties acting through or under them, or through their order, be and they are hereby restrained and enjoined by this preliminary injunction from threatening to or from calling a strike, work stoppage, or picketing, system-wide or local, of any kind or character, or from using any similar device, either directly or indirectly, through themselves, their agents or others, against the Central of Georgia Railway Company, and from striking, stoppage of work, picketing or from using any similar device, in an effort to or designed or intended:

A. To compel the Plaintiff to agree with the Defendants to a cancellation, modification, change or revision of the award of Referee George Cheney dated August 1, 1951, to wit: . . .

B. To compel the Plaintiff to agree to or consumate a rule or contract provision with the Defendants inconsistent with the Cheney Award, and specifically from compelling the Plaintiff to agree with Defendants to the following Rule first proposed by the Defendants on November 28, 1953, or any similar contract provision; . . .

C. To compel the Plaintiff to agree to or to consumate a contract provision with Defendants prescribing extra compensation to Defendant Class of employee for uncoupling air, steam or signal hose, which would in any way be inconsistent with the aforesaid Cheney Award."

## The Contentions Of The Parties

Petitioner contends here that the injunction was authorized upon the ground that the dispute was a grievance over the interpretation of the Cheney Arbitration Award. It says that the Railway Labor Act makes it mandatory that where there has been a submission to the National Railroad Adjustment Board there can be no strike pending such submission, and injunction will lie to restrain such, regardless of the provisions of the Norris-LaGuardia Act which expressly prohibits a federal court from granting an injunction in a labor dispute. Concisely, it argues that the Adjustment Board machinery is now "compulsory," is exclusive, and therefore is the only method by which disputes of this type may be handled. In short, the contention is that the present Adjustment Board machinery has been substituted for strikes. Thus, it seeks to require that disputes such as this be participated in by employees without any hint, possibility, or use of their economic strength.

But respondents contend that petitioner's eventual submission of a dispute with the Adjustment Board was conceived as a road-block to respondents' demands for a new contract rule, and was in complete defiance of the collective bargaining process. We urge that the Norris-LaGuardia Act policy (Section 2) embraces the freedom of employees "to negotiate the terms and conditions of . . . employment." Respondents contend that probably no new rule was ever demanded which could not have been said in some way to reflect upon the scope, application or interpretation of existing rules. We submit that Congress never intended the collective bargaining process to be sterilized by such ingenious invocations of the Adjustment Board jurisdiction, as that which petitioner undertook, and never intended that the right to strike could thereby be defeated. In addition, numerous other reasons shown in the record and establishing complete lack of authority for the issuance of the injunction and proving that the motion to dismiss should have been granted will be discussed. The very

foundation of respondents' contentions is that the Norris-LaGuardia Act prohibits the granting of an injunction under the facts shown by this record.

Respondents are compelled to point out several other inaccuracies in the petitioner's statement of the case. The significant fact is that an injunction was granted enjoining a strike. Furthermore, this dispute was never negotiated in good faith or fully mediated (contrary to what is stated on page 11 of such brief). The petitioner refused to negotiate in good faith and actually filed the suit while the mediator was still on the property exercising jurisdiction over the controversy. The reference to the Supreme Court of Georgia having held that the Adjustment Board had jurisdiction over the dispute was, of course, predicated upon what the carrier's petition then and there before it *alleged*, not what the evidence later disclosed as to the character of the dispute. Furthermore, the record confirms that the respondents never filed any answer to the submission to the Adjustment Board. Reference to the Court of Appeals dissenting judge's opinion in describing the complaint is certainly not factual, but conclusory, and has no place in the statement of facts.

## D. THE ARGUMENT

### A Summary

This case involves a dispute over a demand for a new contract rule, not a grievance or so-called minor dispute. Our argument is made in four points.

POINT ONE is that in overruling respondents' motion to dismiss and in granting the injunction the trial court violated the Norris-LaGuardia Act in three different and independent particulars. The *first* is that Section 104 of that act prohibits a federal court from enjoining a strike itself (where no violence is present) irrespective of the remaining provisions of

that act and regardless of whether the threatened strike may have, as the petitioner contends, an illegal purpose or effect either (1) to violate a contract such as the Cheney Arbitration Award here or (2) to violate the Railway Labor Act as to its administrative procedures for settlement of disputes. The *second* is that the trial court's action also violated Section 107 of that act which requires allegations, evidence and findings that unlawful acts have been threatened and will be committed unless restrained *and* also requires that inadequate police protection be alleged, proved and found. The *third* is that the District Court failed to make and file its findings prior to the issuance of the injunction as is required by Section 107 of the same act.

POINT TWO is that the Railway Labor Act as amended in 1934 did not repeal these provisions of the Norris-LaGuardia Act, passed just two years previously. Petitioner cannot, of course, find any express language effecting any such repeal and is compelled to contend that it was repealed by implication. We show that there can be no implied repeal of such an important landmark of legislation as this. For, we point out that the legislative history negatives any implied repeal, that the courts have spoken against it, and that recent decisions have recognized the applicability of the Norris-LaGuardia Act to the Railway Labor Act.

POINT THREE stresses that such 1934 amendments to the Railway Labor Act did not authorize injunctions in a situation such as here. We go into the legislative history and much of that applies equally to Point Two and this one to show that railway labor employees may press their demands for improved working terms and conditions by economic strength regardless of management's plans to thwart their efforts by sidetracking the dispute to an administrative board as here.

POINT FOUR is that the injunction violated the purposes of both the Railway Labor Act and the Norris-LaGuardia Act. We show that the carrier's strategy was aimed at defeating

the prime objective of both of these acts, which is that every possible effort be made to settle differences by full opportunity for both management and labor to negotiate and seek to reach a just agreement. We insist that the action sought by the carrier here, and granted by the trial court, is contrary to the beneficient purpose of both of these two great enactments, which is founded upon the preservation of industrial peace by collective bargaining.

## The Fifth Circuit Court of Appeals Decision

We believe that the decision of the Fifth Circuit Court of Appeals was correct and that the opinion was sound. We are confident that the views expressed by the majority opinion are in full accord with the authorities on the subject.

## Petitioner's Argument Is Fallacious

Petitioner's brief ignores the true character of the dispute involved in this case. It ignores the origin of the dispute as a demand for a new contract rule; it ignores the extended *efforts* to negotiate and the *attempts at* mediation by the National Mediation Board; and it seeks to change the character of the dispute into one of a grievance or contract interpretation, hoping thereby to checkmate the legitimate efforts of respondents to improve the working conditions and pay of the employees for whom respondents are the bargaining representative.

Petitioner's argument here is based upon the false assumption that the National Railroad Adjustment Board is vested with jurisdiction of respondents' dispute. This is revealed in the statement on page 17 of its brief, which says, "Thus on this review we must assume that the National Railroad Adjustment Board has jurisdiction over this dispute." Petitioner is of course at liberty to predicate its argument on any assumption it chooses, but such argument is supported solely by a conclusory assumption nevertheless.

Moreover, the asserted assumption is misdescribed when it is said "we must assume," etc. Respondents categorically and emphatically deny the conclusion with which petitioner clothes its assumption, as well as the assumption itself. Respondents deny that they concede the jurisdiction of the Adjustment Board over the present dispute; they deny that said dispute is properly before such Board; and they deny that whatever there is pending can lift the bar of the Norris-LaGuardia Act against injunction in labor cases.

## POINT ONE. THE INJUNCTION VIOLATED THE NORRIS-LaGUARDIA ACT

### Preliminary

The District Court by the issuance of the injunction violated several provisions of the Norris-LaGuardia Act, any one of which required a dismissal of the complaint and a denial of the injunction. Those violations were serious and recurring throughout the entire case. We take up this feature first for as the Court of Appeals viewed it such should dispose of the litigation.

Section 101 (29 USC Sec. 101) provides that no Federal Court has jurisdiction to issue any restraining order or injunction in a case involving or growing out of a labor dispute except in strict conformity with the provisions of Section 102 which set forth the policy of the Act. This policy is deeply imbedded throughout the Act. The reasons for its passage appear both in the legislative history and in many subsequent opinions of the courts in dealing with it. From all of it there seems to be no question that it was passed primarily to protect labor, not management, against what was considered to be unfair practices. By doing so, Congress hoped that all industry—labor and management—would benfit ultimately and that thus the Act would be in the public interest.

## 1. The Court Enjoined A Strike

The first violation is the enjoining of a strike. A mere casual reading of the injunction will show that this is true. This was the most obvious of all the violations, and this was the avowed purpose of the complaint and the terms of the injunction. Right here it should be borne in mind that the complaint and the injunction were not directed against any unlawful acts—violence—which oftentimes accompany a strike. For there was no violence or any unlawful acts. It sought to enjoin the strike itself as well as picketing.

The Norris- LaGuardia Act does not permit the enjoining of a strike. See Section 104 (a) of that act, 29 USC 104 (a).[3]

Thus Congress has declared that strikes and the other acts set forth in Section 104 cannot be enjoined.

In *Carter v. Herrin Motor Freight Lines,* (CA5) 131 F2d 557, the ban against injunctions barring strikes was emphasized. With respect to the policy of the Act the court stated:

> "This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were . . . legitimate means for advancing . . . "

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3. "No court of the United States shall have jurisdiction to issue any restraining order or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;"

(Then follows the other eight acts likewise exempted, such as membership in a labor organization, picketing, assembling, etc.)

Further the court said:

> " . . . the use of such injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process."

In *Third Avenue Transit v. Quill* (CA2), 192 F2d 971, the District Court had issued an injunction against a threatening strike. The order was reversed by the Court of Appeals which stated:

> "What is pertinent is Sec. 104 of Title 29 which provides that 'no court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute . . . from doing, whether singly or in concert, any of the following acts:' and there follows a series of so-called acts which embrace all of the 'acts' which the injunction restrains."

Of course, one of said acts specifically enumerated in Section 104 is withdrawal from service, singly or in concert.

In *Wilson & Co. v. Birl* (CA3), 105 F2d 948, the court said:

> "Sec. 4 of the Act, 29 U.S.C.A., Sec. 104, enumerates certain acts not subject to injunctive relief . . ."

It referred to them, which includes striking, then declared:

> "A strike, therefore, cannot be enjoined."

Again the court said:

> "We are of the opinion that Federal Courts may no longer issue general injunctions against striking, but only to restrain specific acts of individuals, which we shall presently discuss."

Another case, similar to the preceding one, is *M. I. Mead, Inc. v. International Brotherhood,* (CA1) 217 F2d 6,

in which the employer sought an injunction against a strike and also picketing. No violence was involved. The District Court refused it and the Court of Appeals affirmed, holding that this same Section 104 deprives a federal court from granting an injunction against the several acts, including striking, where a labor dispute is involved.

No case involving an attempt by an employer to enjoin a strike itself has reached this court since the enactment of the Norris-LaGuardia Act, as far as we have discovered. However, one involving the enjoining of picketing has. In *New Negro Alliance v. Sanitary Grocery Co.*, 303 US 552, 82 L ed 1012, 58 S Ct 270, the Court of Appeals for the District of Columbia affirmed the grant of injunction by the management of several stores against picketing of them in a controversy over the non-employment of Negro workers. This court, however reversed and held that a labor dispute was involved, as is defined by the Norris-LaGuardia Act. Then with reference to those acts enumerated in Section 104, which includes striking, it made this pronouncement:

> "The purpose and policy of the Act respecting the jurisdiction of the federal courts is set forth in Sections 4 and 7 [104 and 107]. The former deprives those courts of jurisdiction to issue an injunction against, inter alia, giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence . . . "

It held that the Norris- LaGuardia Act prevented such an injunction. Certainly, then, any other of the acts enumerated in that same section is afforded similar protection from injunction in a labor dispute.

That the Norris-LaGuardia Act applies to railway labor disputes is apparent from *Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Ry. Co.*, 321 US 50, 88 L ed

534, 64 S Ct 413. It says so. Also, footnote 13 of the opinion refers to legislative history to that effect. There, as here, the railway carrier sought an injunction, but in that case it realized that the strike itself was not enjoinable because of Section 104 of the Norris-LaGuardia Act. The injunction sought was against the interfering by violence or threat of violence with the railroad's property and interstate operations. There, interruption of interstate commerce was likewise threatened, contrary to the general purpose of the Railway Labor Act. But there the carrier had not complied with "every reasonable effort to settle such dispute" as is required by another provision of the same Norris-LaGuardia Act—Section 108—because it had refused to arbitrate the dispute. Accordingly, this court denied the injunction.

Thus where the strike is accompanied by violence or fraud, and the injunction is to restrain the violence or fraud—not the strike itself—to obtain such an injunction the complainant must meet the *other* conditions of the Act, to-wit, Sections 107, 108, and 109, which will be treated presently because of their being violated also.

But, as here, where a strike is involved in a labor dispute and an injunction is sought in a federal court against the *strike itself*, a complete defense is made out by Section 104 of the Norris-LaGuardia Act.

## Petitioner's Cases Are Not In Point

Petitioner takes the position on page 28 of its brief that the Norris-LaGuardia Act does not prohibit a federal court from granting an injunction against a threatened strike over a dispute pending before the National Railroad Adjustment Board and of which that board has jurisdiction.[4]

4. Of course, as already pointed out, the assumption of jurisdiction is completely unfounded. The dispute was actually being mediated by the National Mediation Board over the respondents' employees' Section 6 notice under the Railway Labor Act for a change in contract rule and the carrier's defensive contention of permanency of the Cheney Arbitration Award. Its submission to the Adjustment Board was clearly to the wrong board.

In support of that position the petitioner relies upon a number of authorities. Yet not a single one of them except the *Chicago River & Indiana R. Co.* case (also now here on certiorari) involves an injunction which was granted in a labor dispute against a strike or any other of the acts insulated by Section 104 of the Norris-LaGuardia Act against injunction.

In *Switchmen's Union of North America v. National Mediation Board*, 320 US 297, 88 L ed 61, 64 S Ct 95, this court had before it a prayer for declaratory judgment relating to the determination by the National Mediation Board as to the choosing of a collective bargaining representative, not a strike.

In *Virginian Railroad v. System Federation*, 300 US 515, 81 L ed 789, 57 S Ct 592, there was an injunction against the carrier's refusal to treat with and recognize the employees' union, here again nothing whatever relating to a strike or any other act insulated by Section 104 of the Norris-LaGuardia Act.

In *Order of Railway Conductors v. Pitney*, 326 US 561, 90 L ed 318, 66 S Ct 322, there was not a grant of any injunction at all, but a denial of one for failure of the complainant to exhaust its administrative remedies. The court stayed dismissal of the action until resort could be made to the Adjustment Board. This is another illustration of a situation where no act was protected by Section 104.

In *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U S 232, 96 L ed 1283, 72 S Ct 1022, an injunction was granted, not against a strike or other act covered by Section 104, but against the craft representative's failure to represent all without hostile discrimination, and hence the Norris-LaGuardia Act was no bar to the relief sought there.

The *Steele* and *Tunstall* cases, cited by the *Graham* decision and found in the footnote of petitioner's brief, are identical with it on this score.

In *Texas and New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks,* 281 US 548, 74 L ed 1034, 50 S Ct 427, the injunction was against the railroad's interference, influence, and coercing of employees in the designation of their representative under the Railway Labor Act, not a strike or the like. The Norris-LaGuardia Act had not even been passed at that time—1930. Hence, that case can have no possible application to this question here.

In *Brotherhood of Railroad Trainmen v. Howard,* 348 US 768, 96 L ed 1283, 72 S Ct 1022, there was another injunction granted against certain employees' claim of racial discrimination against them by a craft representative. Here again, nothing in Section 104 relates to that, so the Norris-LaGuardia Act was no barrier to the relief sought in that instance.

In *New York Central Ry. Co. v. Brotherhood of Railroad Trainmen,* 140 Fed. Supp. 273 the court enjoined a a strike over closing a railroad yard. But the significance here is that the court held that there was no *labor dispute* involved to make applicable the protection of this Norris-LaGuardia Act. The prohibition against strikes under that act is in those situations where there is a labor dispute. Admittedly, in the case at bar there was one.

In *Railroad Yardmasters Of America v. Pennsylvania Ry. Co.,* (CA3) 224 F2d 226, the court enjoined an imminent change in the collective agreement contrary to the Railway Labor Act; and here again was the absence of a strike or any other act enumerated in Section 104.

In *Brotherhood of Railway and S. S. Clerks v. Atlantic Coast Line Ry Co.,* (CA4) 201 F2d 36, the injunction

ran to compel the carrier to bargain in good faith, as in the *Virginian Ry.* case, supra. It is still another example of nothing inhibited by the same Section 104.

In *Rolfes v. Dwellingham,* (CA8), 198 F2d 591, the injunction was granted to employees against the enforcement of an Adjustment Board Award without giving the required statutory notice for 30 days intended change in agreements. No strike or other activity exempted by Section 104 was in the factual picture.

In *Missouri, Kansas, Texas Ry. v. Brotherhood of S. S. Clerks,* (CA7) 188 F2d 302, was another instance of injunction granted because of failure to give the required notice relating to an Adjustment Board award, not covered by Section 104.

Continuing, and referring to the petitioner's next reference to the Norris-LaGuardia Act (which appears in footnote 7, page 36 of its brief), in *Textile Workers Union of America v Alco Manufacturing Co.,* 94 Fed. Supp. 626, the Court granted an injunction requiring the employer to comply with a collective agreement, still a conspicious absence of any of the acts listed under Section 104.

In *United States v. B. L. E.,* 79 F Supp 485, cert. den. 335 US 867, 93 L ed 412, 69 S Ct 137, the court granted an injunction sought by the United States Government against a strike because there the government itself was operating the business and of course was not subject to the Norris-LaGuardia Act so as to be a party to a labor dispute.

In *Railway Employees' Co-Op Association v. A. B. & C. Ry. Co.,* 22 F Supp. 510, there was an injunction against the carrier's change of agreement while mediation was in progress and without the required 30 days statutory notice, instead of any strike or other activity embraced in Section 104.

Reverting to the text of the brief itself, the next case relied upon is *Elgin etc v. Burley,* 325 US 711, 89 L ed 1886, 65 S

Ct. 1282, which did not even involve an injunction. It was an action for damages, and has no relationship at all to the question at bar.

In *Local* 19, *Warehouse, etc. v. Buckeye Cotton Oil Co.* (CA6), 236 F2d 776, the injunction was to compel arbitration of a dispute concerning a contract, still another different situation from where an injunction was sought against a strike or any of those acts spelled out as injunction free by the Norris-LaGuardia Act.

We leave *the Chicago River* grievance case, cited next in petitioner's list of authorities, for those who are arguing it here on certiorari at this same time.

The final case thus relied upon, *Cook County National Bank v. United States*, 107 US 445, 27 L ed 537, 2 S Ct 561, deals not with the Norris-LaGuardia Act, but with banking statutes, and a reading of it makes clear what petitioner's quotation from it infers, that it was dealing with the doctrine of *implied* repeal, the very position from which petitioner here in this court has shied away.

Thus, the petitioner here cannot derive any support whatever from any of those cases as authority for its position here that in the face of the Norris-LaGuardia Act, a federal court may enjoin a strike itself, which is unaccompanied by any violence, in a labor dispute.

If the strike had taken place and violence had developed in the case at bar, the injunctive arm of the court could have reached the violence, but not the strike itself. But the court below is correct in stating that petitioner's complaint carefully refrained from alleging threatened or imminent acts of violence. Section 107 (a) of the same Act requires a finding of such unlawful acts, as we shall discuss presently. It seems to us that for that reason alone; viz, the enjoining of a strike

itself, that petitioner's complaint would not lie and that no injunction should have issued. The Norris-LaGuardia Act's Section 104 prevents federal courts from enjoining strikes in *all* kinds of labor disputes. It has no provision excepting railway labor disputes.

### 2. The Findings Were Not Made And Filed Prior To Issuance Of The Injunction

The injunctive order violated the provisions of Section 109[5] requiring findings to be signed and filed by the court before an injunction can issue. There is no denial whatever of this. In this case the record shows that the findings of fact, conclusions of law and judgment granting the preliminary injunction were incorporated in the *same* document dated March 10, 1955 and marked filed March 11, 1955 (R. 219-240). This is still another independent violation.

### 3. No Unlawful Acts Were Involved And No Inadequate Police Protection Was Shown

Both of these are violations of Section 107[6] of the Norris-LaGuardia Act and will be treated together in that order.

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5. Section 109 provides: "No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; . . ."

6. Section 107 provides: "No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof; . . .

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

First, it will be observed that no violence of any type or degree was attempted to be alleged in the complaint. There was no evidence whatever of any violence. Neither finding number 33 referring to the degree of damage depending on the destruction and violence of the strike, nor 34 dealing with the Carrier's being threatened with unlawful acts by respondents so as to result in damage to petitioner's property, measure up to the requirement of physical violence being threatened and would be continued unless enjoined. The Court of Appeals evaluated these findings and so held.

Petitioner claims that the strike would constitute a breach of contract (Cheney Award) and that the refusal to stand by while petitioner invoked the jurisdiction of the Adjustment Board amounted to this statutory violation. We submit that neither of these things constitutes the required "unlawful acts."

Courts have repeatedly held that the "unlawful acts" referred to are acts of violence. As was stated in *Wilson v. Birl* (CA3) 105 F2d 948,

> "Irreparable injury to the complainant's property, which has no police protection, is an essential averment and finding; and the 'unlawful acts' do not constitute a general reference to anything that may be considered illegal, but specifically to the acts of violence which the authority of the executive is calculated to control."

And further that court said:

> "Whether or not the strike in this case is illegal, because of its purpose, as argued by appellant, is beside the point. The test is no longer given the uncertain elasticity of 'illegality.'"

In this record there is nothing whatever to indicate any threat to any damage to person or property. There was no disorder whatever.

Thus, there were no unlawful acts alleged, proved, or found, as is required.

The other violation of Section 107, the failure to allege, produce evidence as to, and make findings that public officers "are unable or unwilling to furnish adequate protection," is equally as obvious. Since there was no violence, there was no need for any police protection. None whatever was sought. Again, the Court of Appeals here found this requirement was not met.

In *Wilson & Co. v. Birl,* (CA3), 105 F2d 948, already cited, where a strike was involved, in addition to other reasons why the injunction should be refused on account of the Norris-LaGuardia Act, the Court reviewed the record as to police protection. It referred to this particular requirement and stated that "on this ground alone the injunction could have been refused."

The importance with compliance with it is emphasized in *Carter v. Herrin Motor Freight Lines,* (CA5), 131 F2d 557, supra, in these words:

> " . . . unless the local authorities whose duty it is to keep the peace have first been resorted to, and have either advised that they could not or would not keep it, or advising they could and would, have failed through inability or unwillingness to do so. It is, therefore, of the very essence of the right to apply for injunctive relief in a federal court that the statutory allegation be made and definitely proven."

Additional decisions on the subject are *Greene v. Obgefell* (CADC) 121 F2d 46, (cert. den. 314 US 637, 86 L ed 511, 62 S Ct 72), and *Donnelly Garment Co. v. Dubinsky,* (CA8) 154 F2d 38.

Thus, for either of these two failures to comply with the requirements of Section 107 of the Norris-LaGuardia Act, the complaint should have been dismissed and the injunction

denied. The Court of Appeals' views as to both of them were correct.

## Violation Of Another Statute Is Immaterial Here

Petitioner's contention here is that the Norris-LaGuardia Act does not apply because the threatened strike would violate the Railway Labor Act.[7] It says that to strike while it has submitted a dispute to the Adjustment Board is contrary to the act. We deny that there is any such violation and we shall demonstrate that there is none in the next point.

The Norris-LaGuardia Act denies jurisdiction to federal courts to enjoin any strike in a labor dispute, regardless of whether its purpose or effect is legal or illegal.

In *Milk Wagon Drivers Union, Local No. 753, et al. vs. Lake Valley Farm Products, Inc.*, 311 US 91, 85 L ed 63, 61 S Ct 122, the employer sought an injunction to prevent an attempt by the labor organization to unionize certain individuals. The employer contended that the picketing activities in that attempt violated the Sherman Anti-Trust Act and that, therefore, regardless of the Norris-LaGuardia Act the court could enjoin the picketing (an act prohibited from injunction under Section 104 of that Act). This court held:

> "For us to hold, in the face of this legislation, that the federal courts have jurisdiction growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress."

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7. In the lower court one of the petitioner's contentions was that the strike would have violated the Cheney Arbitration Award. But now it apparently recognizes the futility of such an argument. For the courts have held uniformly that the mere fact that the strike would have for its purpose or effect the violation of a contract is no excuse to disobey the prohibition of Section 104 of the Norris-LaGuardia Act. *In Re Third Avenue Transit Corp.* (CA2), 192 F2d 971; *Alcoa S. S. Co. v. McMahon*, (CA2), 173 F2d 567 (Cert. Den 338 US 821, 94 L ed 498, 70 S Ct 65) and others.

It ordered the complaint dismissed.

Other authorities to the effect that the protection of the Norris-LaGuardia Act avails regardless of violation of another statute are *Wilson & Co., v. Birl,* (CA3), 105 F2d, 948, already quoted from, *East Texas Motor Freight Lines v. Teamsters,* (CA5), 163 F2d 10, dealing with an alleged violation of the Motor Carriers' Act (49 USC Sec. 301 et seq.) and *Lee Way Motor Freight v. Keystone Freight Lines,* (CA10), 126 F2d 931, (Cert. Den. 317 US 645, 87 L ed 519, 63 S Ct 37), stressing that the act "does not concern itself with the background or motives of the strike."

Further, petitioner refers to judicial references relating to the "sacrifice or obliteration of rights" such as is found in *Order of Railway Conductors v. Pitney,* 326 US 561, 90 L ed 318, 66 S Ct 322; *Switchmen's Union of North America v. National Mediation Board,* 320 US 297, 88 L Ed 61, 64 S Ct 95 as well as in *Graham v. B.L.F.&E.,* 338 US 232, 94 L ed 22, 70 S Ct 14, and the *Steele* and *Tunstal* cases which the latter cites. By its own diverting action in the direction of the Adjustment Board, petitioner seeks to conceal the fact that it is trying to "sacrifice and obliterate" the rights of its own employees to negotiate and to strive for new rules, rates of pay and working conditions. If "sacrifice and obliteration of rights" is to be avoided in this case, it can be accomplished only by approving the dismissal of petitioner's complaint.

Petitioner's argument makes one more set of false assumptions. It assumes that since *Slocum v. D.L.& W. Ry.,* 339 US 239, 94 L ed 795, 70 S Ct 577 and *Order of Railway Conductors of America v. Southern Ry. Co.,* 339 US 255, 94 L ed 811, 70 S Ct 585 deny the rights of courts to make certain decisions they likewise deny to employees the right of self-help. It falsely assumes that the court has jurisdiction to enjoin a threatened strike. It erroneously assumes that a court can issue an injunction in a labor dispute notwithstanding the findings required by Sections 107, 108, and 109 of the Norris- La-

Guardia Act have not been made, (29 USC 107, 108, and 109).

Respondent therefore submits there is no escape from the conclusion that the injunction collided with the Norris-LaGuardia Act and should never have been issued at all. In apparent realization of this, Petitioner has now turned to avoid the Act altogether, either by repeal by implication or a holding of inapplicability to the facts of the case as it sees them.

## POINT TWO. THE RAILWAY LABOR ACT AS AMENDED DID NOT REPEAL THE NORRIS-LaGUARDIA ACT

### Repeal By Implication Is Not Favored

Of course the Railway Labor Act by its 1934 amendments did not specifically repeal any part of the Norris-LaGuardia Act. Petitioner is unable to point to any provision in it that in terms repeals it. Whatever argument is made that the latter Act was so changed must depend upon the doctrine of implied repeal. But as has been stated by numerous courts, repeals by implication are not favored, and such repeal of so recent and important a matter would hardly have been left by Congress to implication, but would have been specifically provided if intended.

In *Mead v. International Brotherhood of Teamsters*, (CA1), 217 F2d 6, the court had before it the question as to whether there had been a repeal by implication of the Norris-LaGuardia Act by the Labor Management Relations Act. The court pointed out that repeals by implication are not favored, especially when

> " . . . the earlier enactment is a significant and tremendously important piece of legislation which the Congress evidently had specifically in mind when it came to enact the Labor Management Relations Act in 1947."

In the *Mead* case fifteen years had elapsed after the enactment of the Norris-LaGuardia Act when the Labor Management

Relations Act was adopted. In the case at bar it was but two years when the 1934 amendments to the Railway Labor Act became law .The significant and tremendously important aspect of the Norris-LaGuardia Act which petitioner seeks to repeal or avoid is reflected in its very great and progressive purpose of freeing strikes from elimination by injunctions. As this court stated in *Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Ry. Co.*, 321 US 50, 88 L ed 534, 64 S Ct 413,

> "But one major purpose of the Act was to prevent the use of injunction improperly as a strike breaking implement."

That case involved a dispute under the Railway Labor Act, and the court applied the Norris-LaGuardia Act to deny the injunction because the conditions in Section 108[8] of the Act had not been met. The vacated injunction was against acts of violence, and the court particularly applied that part of Section 108 of the 1932 Act which required every reasonable use to be made of all available machinery, in that case voluntary arbitration. The court's opinion positively reflects the continued existence and applicability of the Norris-LaGuardia act in railroad labor cases.

## The Right To Strike Was Continued In The 1934 Amendments

It is important to remember that the 1934 amendments of the Railway Labor Act, aside from making more specific guarantees for freedom of choosing representatives under Section 2, (not involved in this case), sought to produce only certain procedural changes. Those were: (1) compulsory establishment of National Adjustment Boards and (2) pre-

8. Section 108 provides: "No restraining order or injunctive relief shall be granted to any complaintant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

vention of deadlocks by a neutral. Six years before the enactment of the Norris-LaGuardia Act the original Railway Labor Act was adopted and by it Congress clearly intended to preserve the right to strike.

At that time the right to strike was fully recognized. *American Steel Foundries v. Tri-City Central Trades Council*, 257 US 184, 66 L ed 189, 42 S Ct 72, opinion by Chief Justice Taft. There was nothing in the 1926 Railway Labor Act which militated against this right. Actually, in each of the three instances where the question of the right to strike arose in the 1926 Congressional Committee hearings on the original Railway Labor Act quite positive statements were made to show that such right to strike was preserved. (Senate Committee Hearings on S. 2306, pp. 15-17, p. 25 and pp. 151-152.)

The 1934 Amendments did not seek in any way to change this. As will appear later, the 1934 Congressional Committee hearings recognize the binding character of Adjustment Board Awards where one could be obtained under the original Act; and the 1934 amendments merely sought to produce more awards with the same binding character. We submit an increase in the number of awards constitutes no denial of the right to strike and no enlargement of the jurisdiction of the courts to enjoin strikes at any time. It is very hard for us to understand how the 1934 amendments of the Railway Labor Act could be said to have struck down the 1932 Norris-LaGuardia Act when it contains nothing at all which departs from the 1926 Act's preservation of the right to strike.

The discussion of strikes was concerning the enforcement of awards only. It is significant that the subject of strikes was not mentioned in those proceedings any more than it was.

But, even if the present case were to be classified as one involving a mere grievance dispute, the important factor here is that the discussion on that occasion dealt with the question of whether a strike would be permitted *after* the

Adjustment Board had made an award *adverse* to the employees on such a grievance dispute submission.

## This Was No Grievance

Petitioner's misconception as to the type of dispute involved in this case is of great significance here. For in dealing with the question of whether Congress by the 1934 amendments to the Railway Labor Act made the submission of grievances to the Adjustment Board the exclusive remedy for their handling, thus outlawing the right to strike over them during the pendency of such submission, it is important to identify the dispute. Petitioner continues throughout its brief to classify it as a mere grievance dispute. Its references to and quotations from the legislative history of such 1934 amendments are replete with and relate only to grievances, and therefore the inferences and conclusions which it attempts to pull from them do not apply to the dispute which is actually involved here.

Indeed, the controversy between the petitioner and the respondents cannot in any way be classified as a mere grievance dispute. It was about to produce a strike and the carrier realized this by enjoining it. Its consequences, as to interruption of interstate commerce and the like, the petitioner was careful to labor in its complaint. That dispute was brought on by the employees' demand for a contract rule change under Section 6 of the Railway Labor Act. As an argument against the pay increase sought the carrier defended by contending that the terms of the Cheney Award precluded the wage demand. The parties recognized the grave character and magnitude of the dispute by participating in mediation. It is undisputed that the National Mediation Board still had jurisdiction of that dispute when the carrier filed this suit.

## Railroad Men Know The Right To Strike Still Exists

But there is a more recent chapter in this legislative history. That the 1934 amendments to the Railway Labor Act did not

make it unlawful to strike during submission of any dispute to the Adjustment Board is quite apparent from recent legislative history. We refer to what is known as the Donnell bill, which was introduced in the United States Senate in 1950. It was entitled "A bill to Amend the Railway Labor Act, as amended, so as to prevent interference with the movement of interstate commerce and for other purposes." It contained the following provision:

> "Section 10 (A). First. Any strike, including any concerted stoppage of work by employees or any concerted slow-down, sit-down, walk-out, or other concerted interruption of operations by employees, or any lockout by a carrier, arising out of or in connection with any dispute falling within the purview of this Act, shall be unlawful."

So in 1950, 16 years after the 1934 amendments were considered, Congress had before it a proposal which would have made it unlawful for railway employees to strike. But the bill did not even receive a favorable committee report and never reached the floor of the Senate.

Extensive hearings were held, at which representatives from both railway management and labor expressed their views as to the effect of existing 1934 amendments which are now under consideration in this case. (Senate Subcommittee of Com. on Labor and Public Welfare, 81st Congress, Hearings on S. 3463.)

The same Mr. Harrison, labor's representative in the 1934 hearings from whom petitioner here seeks to draw inferences favorable to it, testified as follows:

> "MR. HARRISON. Now why do I reason it out that way? You see, under the present law, if we have a complaint against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, we may, at our own election, take that dispute to the Railroad Adjust-

ment Board for decision, or we may strike if we want to under the present law." (p. 205)

Spokesman for railroad management testified in a similar manner. Mr. Loomis among other things said this:

*"I should make it clear that the cases which are referable to the National Railroad Adjustment Board are not cases where either side is seeking to change an agreement or to secure different wages, rules or working conditions.* These cases only involve the proper interpretation of the contracts in effect or a grievance arising under said contract. There is no excuse for a strike in any of these cases. * * * The parties can submit the question to the National Railroad Adjustment Board; they can arbitrate it under the provisions of the Railway Labor Act; they can agree to set up a special Adjustment Board on the particular property to dispose of such disputes. Surely a strike should not be called because of the failure of the parties to agree on a proper interpretation of a contract when the law provides means for securing a binding interpretation.

S. 3463 would outlaw strikes in these types of cases and we are heartily in accord with the view that such strikes should be outlawed." (p. 86) (Emphasis Supplied)

Another representative of railway management, J. Carter Fort, expressed it this way:

"As to disputes concerning the interpretation of agreements, the present law does afford an opportunity for employees to obtain final and enforceable decisions through the machinery of the National Railroad Adjustment Board set up under the provisions of the amendments of 1934. However, the law does not require that employees take such disputes to the Adjustment Board, or abide by the decisions of the Board. And it does not forbid strikes in connection with disputes falling within the jurisdiction of the Adjustment Board, and there have been many strikes of that kind." (p. 13)

Thus, these were expressions from railroad men who know what the Railway Labor Act as amended in 1934 means. More appears in the appendix to this brief. These were their practical constructions placed upon the very legislation which petitioner now employs in its efforts to sustain this injunction against the strike threatened here.

The proceedings on the Donnell bill should forever put to rest petitioner's contention.

## Recent Decisions Do Not Support Any Such Repeal

As a matter of fact, petitioner's argument in the court below was chiefly on the point that the Norris-LaGuardia Act did not prohibit the injunction because of a claimed illegal breach of contract and some sort of violation of the sections of the Railway Labor Act providing for the Adjustment Board's jurisdiction. These points are not predicated upon any repeal of the Norris-LaGuardia Act. In addition, the dissenting judge in the court below, whose opinion petitioner now so ardently espouses, admitted that there had been no repeal of the Norris-LaGuardia Act.

The Congressional purpose of the Railway Labor Act was clearly stated in *Washington Terminal v. Boswell* (CADC), 124 F2d 235, aff. 319 US 732, 87 L ed 1694, 63 S Ct 1430, as follows:

> "The Railway Labor Act was designed, not to outlaw the right to strike, but merely to prevent the necessity for its exercise."

Certainly the 1934 amendments intended no change whatever in strike policy. The country had not at that time been troubled with excessive strikes. Railroad strikes had been very infrequent indeed. As appears in footnote 7, page 553 in *Vir-*

*ginian Railroad v. System Federation*, 300 US 515, 81 L ed 789, 57 S Ct 592, (1937):

> "There was evidence available to Congress that the labor policy embodied in the Railway Labor Act had been successful in curbing strikes. In the eight years subsequent to the passage of the 1926 Act, there were only two small railroad strikes. Since the 1934 Amendment there has been but one."

All this being true, it is erroneous to attribute to Congress any intent to strike down or limit or to render inapplicable the Norris-LaGuardia bar against the use of injunctions in Labor disputes. The District Court's injunction in the instant case certainly proscribed the use of self-help and was at total variance with the design of the Act and the intent of the 1934 amendments.

## POINT THREE. THE 1934 AMENDMENTS DO NOT AUTHORIZE INJUNCTIONS

In view of what has already been presented, we feel that it has been demonstrated that in 1934 Congress did not outlaw strikes. That alone should be decisive of this case.

But another approach is that it is certainly clear that the 1934 amendments to the Railway Labor Act do not specifically authorize the use of injunctions. Nor does the legislative history of that amendment reflect any intention of increasing the use of injunctions in labor disputes.

Petitioner's effort to support its position with quotations from the Congressional Committee hearings is not justified. Such quotations are taken out of context and do not reveal the true intention of the language used.

The conditions which the 1934 amendments were intended to correct were the existence of adjustment boards on only 60 railroads, and the inability of getting decisions in the face of the very extensive practice of creating deadlocks with no

means for resolving them. The sole employment of compulsion by the amendments is with respect to the establishment of the National Board and to the appointment of referees to *dissolve all deadlocks.*

Moreover the procedural changes effected by the 1934 amendments did not in any manner apply to contract negotiation procedures. The case at bar involves a demand which at its inception was one for a new contract rule. It was one which at all times thereafter continued as a contract demand until petitioner belatedly (and we submit erroneously) sought to convert it into one for the Adjustment Board. There is nothing in the 1934 amendments changing the contract negotiation procedures of the original act. There was therefore no change at all which could affect the case at bar.

But even if the case were to be treated as one for a grievance or one of contract interpretation, as petitioner contends, the committee hearings reveal no support for compulsory *submission of* grievances or contract interpretation to the Adjustment Board; and of course the language in the amendments as adopted is clearly permissive. Nor do the committee hearings or the amendments reveal a single intention to prevent strikes with respect to anything concerning either grievances or contract negotiating processes.

In the Senate Committee hearings, p. 33, Mr. Harrison referred to conditions of unrest due to deadlocked cases and interruptions to service which the Act intended to *minimize*—not prohibit. At page 35, he referred to *compulsory determination* of grievances—not compulsory submission of them to the Board.

In the House Committee hearings, Commissioner Eastman, in discussing the situation of deadlocked cases, spoke of the National Board as a place to which grievances "may be referred." At page 59, Mr. Eastman stated that it was his understanding that a strike could not be called *after* an award had been made. At page 61, he expressed a personal opinion that

strikes ought not be called at all with reference to grievances, but he is not then purporting to interpret or construe any proposal which was before the committee. At page 63, Mr. Carmalt thought that an injunction would lie against a strike growing out of the *settlement* of grievances under Section 3 of the bill under consideration.

The 1926 Act certainly at no time required the submission of grievances to any board or forbade strikes with respect to any disputes, grievances or otherwise. It sought merely to minimize them. The 1934 proposal did not intend to make any changes in this regard. It sought only to establish a National Board and to provide a method for breaking deadlocks. The 1934 amendments were never intended to be a general revision or overhaul of the original Act. The 1926 Act was deemed by all to be satisfactory except for corrections needed in two or three respects; and these corrections did not include compulsion as to submission of grievances or contract interpretations, or the denial of the right to strike.

In fact this court stated in *Moore v. Illinois Central*, 312 US 630, 85 L ed 1089, 61 S Ct 754, that:

> ". . . neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

This statement was made in a case involving an individual's claim for wrongful discharge.[9]

9. The subsequent opinions in *Order of Railroad Conductors v. Pitney*, 326 US 561, 90 L ed 318, 66 S Ct 322, and *Slocum v. Delaware L. &W. Ry Co.*, 339 US 239, 94 L ed 759, 70 S Ct 577, are consistent with the *Moore*, supra, holding. They show that resort to the Board is not mandatory or exclusive in the handling of such disputes, but is an administrative remedy that a complaining party must first exhaust, before he seeks court action, where an interpretation or application of a railway collective agreement is involved.

We submit that the suggestion made in the dissenting opinion in the lower court that two or more statutes should be "accommodated and adapted" to effect the total policy reflected by all constitutes a suggestion for judicial legislation. Two statutes should of course be interpreted harmoniously, but when one or the other must be "accommodated and adapted" in order to do so legislative changes are being made which ought never be made unless necessary and clearly intended by the acts themselves. Certainly the principle of *accommodation and adaptation* ought not be employed to alter either the effect or application of so important a law as the Norris-LaGuardia Act.

## There Is No Express Provision In The Act

Further, were there to be read into the 1934 Act a provision for judicial intervention in the manner petitioner desires, it would be necessary to reverse or ignore the pronouncement of this court in *General Committee of Adjustment v Missouri-Kansas-Texas Ry. Co.* 320 US 323, 88 L ed 76, 64 S Ct 146, declaring that

> "The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicated."

It is significant that this important decision was not mentioned either in the dissenting opinion in the court below or in the opinion of the court in *Chicago River and Indiana Ry. Co. v. Brotherhood of Railroad Trainmen,* 229 F2d 926.

Without laboring the matter further, and without intending to suggest any controlling significance in any of the discussions appearing therein, the appendix to this brief quotes fairly ex-

tended conversations from the committee hearings. In this way the correctness of the statements made herein and the self-serving use of quotations made by petitioner will be apparent. In the final analysis, nowhere in the Railway Labor Act, as thus amended, is there any provision authorizing an injunction in a situation such as here.

## POINT FOUR. THE INJUNCTION VIOLATED THE PURPOSES OF BOTH THE RAILWAY LABOR ACT AND THE NORRIS-LaGUARDIA ACT

### Another Reason For Affirmance

In the present case the injunction violated the purposes of both the Railway Labor Act and the Norris-LaGuardia Act; and for this reason the Court of Appeals decision should stand, though this was not a ground stressed by the court below.

The Railway Labor Act in pursuit of industrial peace requires collective bargaining. The Norris-LaGuardia Act supports this policy. See Section 2, where freedom of the employee to "negotiate the terms and conditions of . . . employment," is provided for.

The respondents sought to negotiate, litigated and mediated for 14 months; and petitioner then finally sought to derail the dispute by shunting it into the Adjustment Board. We submit that such effort on the part of petitioner constitutes a misuse of the processes of the Railway Labor Act. The jurisdiction of the Adjustment Board was never intended by Congress to be a device for thwarting the contract negotiating process.

It cannot be disputed that in contract negotiations Congress intended to preserve the right to strike, seeking only to delay the same and hoping that a settlement may be reached in the interim. Congress never intended the availabilty of any board

as a means of denying the right to strike which was so carefully preserved. In fact, Congress never intended to deny the right to strike in any dispute at all. Congress knew the ever changing character of railroad employment, the non-static character of its status and of its wages and working conditions. It is inconceivable that the rule made applicable by the Cheney Award would be considered as forever permanent by anyone.

It is therefore clear that the injunction, for this additional reason, ran counter to the purposes of both of these important laws.

## E. CONCLUSION

Wherefore respondents respectfully submit that the court below correctly ruled that the injunction was issued in violation of the Norris-LaGuardia Act, and properly directed the dismissal of the suit. Any other conclusion would damage the collective bargaining process which is of the very essence of our national industrial economy.

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### Certificate Of Service

I, Benning M. Grice, of counsel for respondents in the foregoing case, certify that I have on this date, prior to filing, served a copy of the within brief upon each of the counsel for petitioner, by first class mail with proper postage affixed thereto to their office addresses.

This January 24th, 1957.

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BENNING M. GRICE

## APPENDIX—EXTRACTS FROM LEGISLATIVE HISTORY OF RAILWAY LABOR ACT

### PART ONE

This portion deals with the 1934 Amendments.

Hearings were held before the Senate Committee on Interstate Commerce of the 73rd Congress. The House Committee on Interstate and Foreign Commerce considered a similar bill. The overall problems and proposed corrective measures were explained by the principal draftsman of the bill, Federal Coordinator of Transportation, Joseph B. Eastman. Management's chief spokesman was M. W. Clement. George M. Harrison spoke for the 21 major railway Brotherhoods. After favorable Committee reports, these bills were debated on the floors, and house bill 9861 was passed on June 18, 1934, to become the amendments to the 1926 Act.

**I. The 1926 Act had served well and the 1934 changes did not alter its basic principles. In the Senate hearings all agreed upon that.**

Commissioner Eastman said that the 1926 Act had been tried for almost eight years, that it had "served a very useful purpose and has brought about many good results, but experience has shown that it is in need of improvement;" that the proposed bill contains such improvements, but "does not depart from the general principles of the present Railway Labor Act, but instead, is designed to re-inforce its principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done." (Senate Hearings, p. 10). Likewise, Mr. Harrison stated that the proposed bill was designed "to maintain substantially the same method" of the 1926 Act "for the adjustment of labor relations," that while the 1926 act's "principles are sound, there is need of some amendments . . . " (Senate hearings, p. 28). Mr. Clement stated that the 1926 Act had "functioned effectively

for eight years," but pointed out that there were two defects which should be corrected. (Senate hearings, p. 55). The Chairman of the United States Board of Mediation, Samuel E. Winslow, recited the legislative history of the 1926 Act, stating that it had needed only two changes, (Senate hearings, p. 136).

The Senate Report was to the same effect (No. 1065 on S. 3266).

In the House hearings the views were the same. (House Hearings, Statements of Mr. Eastman, p. 16; Mr. Harrison, p. 78; Mr. Clement, p. 123). His later words summed up, "The Railway Labor Act of 1926 with certain modifications, is nearly a perfect bill for the settlement of major troubles between men and management." p. 139.

## II. The Major Changes Related Only To Employee Representation and Adjustment Boards

The employee representation phase relates to Section 2 of the Act and does not concern us here. It is the Adjustment Board changes which are pertinent.

Before the Senate and House Committees all agreed that the defects were (1) prevailing *failure* of management and labor *to agree to establish Adjustment Boards*, and (2) *failure* of those which had been established *to reach decisions* because of *deadlocks*.

Mr. Eastman recited the history of Adjustment Boards and described the situation accurately:

"Because of the lack of adjustment boards in many situations and the tendency of those which do exist to deadlock, very disturbing conditions have at times been created . . . The bill before you, S 3266, attempts to remedy both of these deficiencies in the present law. It provides for the creation of

a National Adjustment Board . . . Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation." (Senate Hearings, p. 17.)

Mr. Harrison deplored the lack of establishment of adjustment boards. As to the proposed bill he said:

> "The language suggests first, that there shall be a National Adjustment Board established; that means it is mandatory and must be set up." (Senate Hearings, p. 30.)

As to deadlocks, he remarked that the new law would provide for the appointment of a neutral, if necessary, so that a decision would be reached, (Senate Hearings, p. 32).

Mr. Clement, for the railroads, agreed that decisions must be forthcoming, (Senate Hearings, p. 69).

Mediation Chairman Winslow stated that one of the two needs was "getting an arrangement for the operation of adjustment boards, so that you will get decisions. And by that I mean decisions. The failure of adjustment boards to decide has bedeviled this work . . . " In answer to a question whether "there must be some compulsory system to actually create boards that can arrive at a decision," he said, "not only can, but must." (Senate Hearings, p. 136 and p. 137.)

Near the end of the Senate hearings, Commissioner Eastman summed up the contentions of the parties as to the Adjustment Board problem in these words:

> "The railroads propose a substitute for all of Section 3, which provides for a National Board of Adjustment. Before taking up the points of disagreement, it will be well to consider how far there is an agreement. Apparently, it is agreed by all that the provision in the present act for boards of adjustment has been ineffective: (1)

because the establishment of such boards has not been compulsory, and (2) because there has been no way to prevent deadlocks in those which have been set up. The employees want a National Board of Adjustment, divided into four sections, to be created definitely and certainly; and the railroads, as I understand them, are willing to have 16 regional boards of adjustment set up. Both parties are willing to permit system or other local boards of adjustment to be set up by agreement, so long as the arrangement is otherwise within the terms of the act. Both are willing to have neutral members appointed, and by the Mediation Board if necessary, in order to prevent deadlocks." (Senate Hearings, p. 152 and p. 153.)

The Senate Report (No. 1065) stated that in the past regional boards had not been set up and that both the carriers and the employees had now agreed "that the setting up of boards for the settlement of disputes should be made compulsory, when necessary."

In the House Hearings, the statements of the advocates were quite similar to those already made in the Senate.

Mr. Eastman covered his previous ground as to the two desired changes. Then he stated that the proposed bill "attempts to remedy both of these deficiencies" by providing for the creation of a national board for "grievances" to which they "may" be referred. He pointed out that provision had been made to prevent deadlocks, by providing for a neutral to be appointed by the Mediation Board. (House Hearings, p. 47.)

Mr. Winslow urged that the board be constituted so that "decisions will be made." (House Hearings, p. 72.)

Mr. Harrison gave much the same statement that he had given before the Senate group as to the history of the Adjustment Board's situation, emphasizing the failure of estab-

lishment and deadlocks. He stated labor's position as to Adjustment Board's handling of "grievances" and he emphasized that the Adjustment Board was designed to adjust *grievance* cases.

> "So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to the minor-grievance cases that grow out of the interpretation and/or application of the contract already made that they can very well permit those disputes to be decided, if they desire to progress them, to be decided by an adjustment board." (House Hearings, pp. 81-82.)

> "The bill is designed to bring that very thing about. And that is what we hope will come about, because we feel that it is in the interest of our industry and we believe it is in the interest of the people of this country to maintain peace on these railroads and adjust our controversies in an enlightened and intelligent fashion." (House Hearings, p. 83.)

Mr. Clement's statement was similar to that previously given in the Senate, as to the same two defects and the corrective steps. (House Hearings, p. 123, and p. 135.)

The House Report (No. 1944) recited failure to establish and deadlocks. It merely stated that the bill *established* a national board to which "these disputes *may*" be submitted.

## III. There Was No Intention To Prohibit Strikes Or To Grant Injunctions

The subject of strikes and injunctions was discussed only on one day in *one* committee hearing—in the House on April 12th, and it is apparent that the sponsors of the bills had not intended even to mention it.

That discussion (House Hearings, pp. 58-64) showed that the only inquiry was over whether a strike could be had over a *grievance* dispute which the employees had submitted through their representative and which had been decided *adversely* to them by the Adjustment Board. Questions from the committee related to an injunction as to *that* situation.

The colloquy began over the effect of "final and binding" awards on a strike, while Mr. Eastman was appearing.

He made it clear that he was referring to grievances only, and *after* such an adverse award.

> "COMMISSIONER EASTMAN. In my answer to you I said there was nothing in the act which provided for the enforcement of those particular decisions. That answer would not apply to decisions of the adjustment board, and they are made final and binding by the terms of this act, and as I understand it, the labor organizations, none of them, are objecting to that provision. *They have their day in court and they have their members on the adjustment board,* and if an agreement cannot be reached between the parties representing both sides on the adjustment board, *a neutral man steps in and renders the decision, and they will be required to accept that decision when made, with respect to these minor matters.* They are not the major issues which arise in the labor world. It has to do with the settlement of these grievances. Page 16 defines the disputes which are to be referred." (Emphasis supplied.) (p. 59.)

All through the discussion it was apparent that the Congressmen were extremely conscious of the right to strike. The question as to injunction came up thus:

> "MR. WOLVERTON. Is there any provision in this bill that would enable the court to obtain an injunction against

a labor organization which is dissatisfied with the final decree and refuses to comply with it?

"COMMISSIONER EASTMAN. Well, I am not able to give you an answer to that. That is a legal question, to be frank with you, that I have not gone into.

"MR. WOLVERTON. It would seem to me that the provisions or language of the bill itself would answer that question. And is it contrary to public policy to have such a provision in there?

"COMMISSIONER EASTMAN. Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on *major issues, but these are not major issues.*" (Emphasis supplied.)

That indicates no purpose to draft any injunction provision, and no application to a rule change as here.

Mr. Eastman continued, acknowledged that he "was in doubt about it" and "would rather see it carried out without it." (p. 61.)

Mr. Carmalt, his legal advisor, was questioned and limited his opinion to a strike over *grievances* after an award; and admitted that "the question has not arisen therefore before this morning," and that he was "more or less thinking out loud" about it. (p. 62.)

To close the discussion, Mr. Eastman showed the true perspective and defined limits of the discussion in these words:

"COMMISSIONER EASTMAN. I may say, so far as I am concerned, it had not seemed to me that matter was a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances,

particularly when they had been passed upon by an impartial tribunal under Government auspices.

"It is a serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full apportunity to be heard and have had their day in court before a tribunal, it hardly seemed to me that that was a question that was likely to arise. My own idea would be, *let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.* (Emphasis Supplied).

'MR. WOLVERTON. Mr. Commissioner, that may be true. Maybe that is a proper course to pursue, but what I am seeking to find out is whether this language declares something else to be the policy.

"COMMISSIONER EASTMAN. Yes.

"MR. WOLVERTON. And, I am endeavoring to find out just what the language of this bill does provide, so that we may know what policy we are adopting. It may be that a hands-off policy is what we should adopt, but in that case, I do not want to see something in the bill that carries a different effect. That is the purpose of my questions, in trying to find out definitely what is the purpose or effect of the provisions in this bill.

"COMMISSIONER EASTMAN. I shall be glad to give the matter study and let you know just what my opinion is upon it." (House Hearings, pp. 63, 64.)

## PART TWO

### The Donnell Bill Which Was Introduced in 1950.

If from the 1934 legislative history there remains any doubt as to what Mr. Harrison, Commissioner Eastman, or

the representatives of railroad management meant by their statements then the more recent events of the 81st Congress completely clarify that.

As stated in the text of this brief, Senator Donnell's bill introduced—but killed in committee—would have done exactly what petitioner here and now says the 1934 Congress actually did.

His bill, S 3463, provided:

"Sec. 10A. First. Any strike, including any concerted stoppage of work by employees or any concerted slowdown, sit-down, walk-out, or other concerted interruption of operations by employees, or any lock-out by a carrier, arising out of or in connection with any dispute falling within the purview of this Act, shall be unlawful."

Its violations called for criminal sanctions.

Mr. Harrison reappeared on the legislative scene and among other things said this:

"It must be apparent to anyone familiar with labor-management relations that if the carriers ever force the common use of court procedure in the enforcement of awards of the Adjustment Board, the employees will be compelled to return to the use of economic strength in contract violations in the first instance and refrain from handling cases with the Board. The provisions of this bill providing for a court review of the awards of the Board will completely destroy the effectiveness of the Board and place in the hands of the carriers a weapon with which they will be able to delay the settlement of all disputes, involving the interpretation or application of agreements, with the result that many strikes will inevitably follow." (Senate Hearings, p. 177.)

Later he remarked:

"MR. HARRISON. What I mean is this: If the carriers

do not depart from the use of court procedure to determine grievances and to bring about compliance with Adjustment Board decisions, then we are heading for trouble and we cannot use the Adjustment Board machinery that is in the law. In your bill, Senator, you propose that every decision rendered by the Adjustment Board would be subject to review by a court. If the railroad, or the losing party, wanted to take it to court and get a review for either side, we say that is bad, that is unworkable, it creates and invites delay, it invites litigation, it creates an expense that would just be impossible for the employees to live with . . . "

"MR. HARRISON. Now why do I reason it out that way? You see, under the present law, if we have a complaint against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, we may, at our own election, take that dispute to the Railroad Adjustment Board for decision, or we may strike if we want to under the present law. But we have gone, as the record shows, to the Adjustment Board, went through all the delay and all the hearing and all of the expense to get a decision. Now we get the decision in favor of the applicants, or plaintiffs, the union, and the railroad says, 'Pooh, pooh, we won't put it into effect. If you want to get that out of us, go to court and sue us.' Well we don't want to sue, because we tried the case once, according to the agreed-opinion procedure, so we threatened to strike, against an arbitrary refusal, to put into effect the decision, after they had their day in court, now they want in this bill proposed by you, to have the right to go into court and get a review of every decision that is handed down by the Adjustment Board. Well, where would we ever get anything settled? That is nonsense, you can't handle labor relations like that." (Senate Hearings, p. 205.)

Mr. Loomis, for the railroads, also recognized the right to strike in such cases. (Senate Hearings, p. 86). Likewise did Mr. J. Carter Fort, (p. 13), as shown in the text of our brief.

So did Mr. Miller, also their spokesman, in this language:

"Currently, as I have indicated, most of the disputes, especially with the operating railway labor organizations, grow out of grievances. If the unions are deprived of their right to strike, and compelled to submit their grievances to the National Railroad Adjustment Board, which was established for that purpose, there will certainly be more 'peace on the rails.'" (Senate Hearings, p. 69.)

Other statements are just as devastating to the carrier's contention here.

CENTRAL OF GEORGIA RAILWAY COMPANY
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84

SAVANNAH, GA., February 18, 1957

Mr. E. P. Cullinan
Office of the Clerk
United States Supreme Court
Washington, D. C.

Re: Central of Georgia Railway Company, Petitioner
vs.
Brotherhood of R.R. Trainmen, et al., Defendants
Case Number 84, October Term 1956

Dear Sir:

Pursuant to our conversation on Friday, February 15, we consider it incumbent upon ourselves, as counsel for the petitioner in this case, to call the Court's attention to a recent development which may have a substantial bearing on the disposition of this case by this court. However, the development has no bearing on the companion case, No. 313, Brotherhood of Railroad Trainmen, et al., v. Chicago River and Indiana Railroad Company, et al..

The issue raised by the petition for certiorari in our case Number 84 is "whether or not the Norris-LaGuardia Act deprived the United States District Court of jurisdiction to enjoin a strike threatened by the Brotherhood of Railroad Trainmen over a dispute, pending the settlement of that very dispute by the National Railroad Adjustment Board, to which Board the dispute has been properly submitted for decision pursuant to the Railway Labor Act".

On February 12, 1957, the First Division of the National Railroad Adjustment Board in Docket No. 33508, Award No. 18062, in the case of Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, rendered a decision, a copy of which is hereto attached.

The aforesaid National Railroad Adjustment Board Award was rendered in the labor dispute involved in case No. 84, Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, et al., which is set down for argument before the Supreme Court on February 25, 1957.

At the time this dispute arose, both the Yardmen and the Roadmen were represented by the Brotherhood of Railroad Trainmen and the dispute involved both "Yardmen" and "Roadmen". (R. 36) As stated in said Adjustment Board Award, on May 25, 1956, the National Mediation Board, in its case R-3033 (the Award shows R-2033) pursuant to Section 2 Ninth of the Railway Labor Act, certified that the Switchmen's Union of North America (AFofL - CIO) was the duly designated representative for the "Yardmen" on the Central of Georgia Railway. Then on December 1, 1956, the Switchmen's Union of North America and the Central of Georgia Railway Company negotiated a contract which in effect settled the dispute involved in this case insofar as it applied to the "Yardmen".

This settlement left outstanding the dispute insofar as it affected "trainmen employed on switch local assignments and/or local freight assignments", referred to generally as "Roadmen", (R. 36), still represented by the Brotherhood of Railroad Trainmen.

It would appear that the National Railroad Adjustment Board in the Award has held that the Cheney Award applied only to "Yardmen".

It may well appear to the Court that our case No. 84 has now been rendered moot since the main purpose of the injunctive relief sought was to stay the threatened strike pending the decision by the Adjustment Board (R. 14,16). The Adjustment Board has now taken jurisdiction and has acted.

The Central of Georgia Railway Company does not know whether the United States Supreme Court under these circumstances would wish to hear argument in Case No. 84, and, if appropriate, Central would be perfectly willing to agree with opposing counsel to waive argument on its case and abide by the decision of the Court in the companion case No. 313, Brotherhood of Railroad Trainmen, et al., v. Chicago River and Indiana Railroad Company, et al.

It is the position of the Central of Georgia Railway Company that the aforesaid award of the National Railroad Adjustment Board sustains Central's position that the National Railroad Adjustment Board had jurisdiction of the dispute. The Adjustment Board took jurisdiction of the cause, considered the case, and

determined that the dispute had become moot in view of the representation of the "Yardmen" by Switchmen's Union of North America and the resultant contract settlement.

However, despite the foregoing development, unless the Central is advised to the contrary, it will be prepared to argue the question as presented in its petition for certiorari in case No. 84.

Sincerely yours,

John B. Miller
Petitioner's Attorney

JBM:bm

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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
First Division

AWARD 18 062

DOCKET 33 508

PARTIES TO DISPUTE: Central of Georgia Railway Company
Brotherhood of Railroad Trainmen

STATEMENT OF CLAIM: "It is the claim of the Central of Georgia Railway Company that Referee George Cheney's Award (Exhibit "A") released at Washington, D. C., August 1, 1951 was a final and binding disposition of the controversy which has existed for many years over the propriety of the performance of the air hose coupling function by yardmen represented by the Brotherhood of Railroad Trainmen, and that the award is not subject to change, cancellation, revision or modification at the demand of the Brotherhood."

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employe within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was held.

The parties to this dispute were parties to a National Agreement dated May 25, 1951, whereby it was agreed that a dispute between them concerning "Coupling and Uncoupling Air, Signal and Steam Hose" should be "submitted to a referee to be appointed by the President of the United States for decision" and that "the decision of the referee shall be final and binding on the parties."

Conformably to the provisions of that agreement, George Cheney was appointed referee and rendered his decision August 1, 1951.

The referee prescribed a rule to become a part of the collective bargaining agreements between railroads, parties to the agreement of May 25, 1951, and their employes, represented by the Brotherhood of Railroad Trainmen, having application to yardmen, subject, however, to the proviso, that "individual carriers (might) elect to accept this rule or retain their present rules and practices" by notifying the General Chairman prior to September 1, 1951, the date upon which the referee's decision became effective.

This carrier elected to retain its, then, practices and duly notified the General Chairman to that effect.

By another agreement of May 25, 1951, to which this petitioner and respondent were parties, a moratorium was set up to expire October 1, 1953. By its terms, neither the railroads nor their employes, represented by the Brotherhood, would propose or undertake to progress, any changes in rates of pay, rules or working conditions, subject to certain conditions or exceptions, not pertinent here.

On November 25, 1953, the Brotherhood served notice on petitioner, Central of Georgia Railway, of its desire to negotiate an "Amendment to Article 41, Coupling and Uncoupling of Air and/or Steam Hose, etc.", having application to yardmen. It is said that lengthy discussions followed, the carrier persevering in its contention that the controversy had been disposed of by arbitration; that "the neutral referee's decision and award specified that the decision and award was final and binding on the parties, and . . . declined to grant the request for a rule."

It is unnecessary to review proceedings that intervened between the close of conferences and mediation and the submission of the case to this Board by the carrier, on January 17, 1955, for decision of the claim as above set out.

On May 25, 1956, the National Mediation Board, in its case R-3033, pursuant to Section 2, Ninth, of the Railway Labor Act, amended, issued its -

"CERTIFICATION

"Therefore, the National Mediation Board certifies that the Switchmen's Union of North America, AFL-CIO, has been duly designated and authorized to represent, for the purposes of the Railway Labor Act, the craft or class of Yardmen (Foremen, Switchmen), employees of the Central of Georgia Railway Company, its successors and assigns."

A copy of said certification is on file with this Division.

There is now on file with this Division copy of an agreement between the Central of Georgia Railway Company and Switchmen's Union of North America, covering Yardmen (Foremen, Switchmen) in the employ of the Central of Georgia Railway Company, effective December 1, 1956, which contains, among other provisions, Article 11, "Coupling or Uncoupling Air, Steam, Signal Hose", providing for the payment for such services, when performed by yardmen, under conditions set forth, of ninety-five cents per day, in addition to other earnings.

It is apparent, therefore, that the issue presented in the above statement of claim, as presented to this Division by the carrier, has become moot, and no longer exists. Therefore, this case is dismissed.

AWARD: Case dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

ATTEST: /s/ J. M. Mondon
EXECUTIVE SECRETARY

DATED AT CHICAGO, ILLINOIS,
THIS 12TH DAY OF FEBRUARY 1957.

CENTRAL OF GEORGIA RAILWAY COMPANY
LAW DEPARTMENT

P. O. BOX 942

JOHN B. MILLER
GENERAL COUNSEL
GEORGE O'DONNELL
GENERAL SOLICITOR
JULIAN C. SIPPLE
ASSISTANT GENERAL SOLICITOR
WALTER C. SCOTT, JR.
COMMERCE COUNSEL

RECEIVED
FEB 21 1957
OFFICE OF THE CLERK
SUPREME COURT, U.S.

SAVANNAH, GA. February 20, 1957

Mr. E. P. Cullinan
Office of the Clerk
United States Supreme Court
Washington, D. C.

Re: Central of Georgia Railway Company, Petitioner
vs.
Brotherhood of R.R. Trainmen, et al., Respondents

Dear Sir:

Please refer to our letter to you of February 18, 1957, and Mr. Grice's letter to you of February 19, 1957, concerning the disposition of Case No. 84, set for argument Monday, February 25, 1957.

As counsel for the petitioner, Central of Georgia Railway Company, we join in respondents' request that the Petition for Certiorari in Case No. 84 be dismissed on the ground that the issue presented in the Petition for Certiorari has become moot; the National Railroad Adjustment Board having rendered its decision in the dispute involved in this case.

Petitioner prays that the mandate of the United States Supreme Court issue pursuant to the judgment of dismissal for mootness directing a vacation of the judgment of the Court of Appeals for the Fifth Circuit in this case* and that costs be taxed equally between the parties.

* See United States v. Munsingwear, 340 U. S. 36

Sincerely yours,

John B. Miller

John B. Miller
Petitioner's Attorney

JBM:bm

LAW OFFICES
BENNING M. GRICE
SUITE 1010 GEORGIA INSURANCE BUILDING
MACON, GEORGIA

February 19, 1957

RECEIVED
FEB 20 1957
OFFICE OF THE CLERK
SUPREME COURT, U. S.

Mr. E. P. Cullinan
Office of the Clerk
United States Supreme Court
Washington 13, D. C.

Re: Central of Georgia Railway Company, Petitioner
vs.
Brotherhood of R. R. Trainmen, et al., Defendants
Case Number 84, October Term 1956

Dear Sir:

The Respondents in the above stated case request the Court to dismiss the proceedings upon certiorari pending here upon the ground that the case has become moot because of the following:

Petitioner's complaint was for injunction against a strike, seeking protection of its pending submission to the National Railroad Adjustment Board of what it considered to be the controlling issue in the case. This Court granted certiorari from the Court of Appeals' reversal of the District Court's issuance of such injunction and overuling of the motion to dismiss the complaint.

However, the National Railroad Adjustment Board, on February 12, 1957, dismissed such submission.

Thus, since Petitioner's submission is no longer pending before said Board no ground whatever exists for the injunction sought because there is no basis to contend that the Railway Labor Act is thereby being violated so as to authorize the injunction in the face of the prohibitions of the Norris-LaGuardia Act.

A copy of letter dated February 18, 1957, from Petitioner's Counsel to Mr. E. P. Cullinan has been received. Due to the dismissal of such submission and also due to the fundamental difference as pointed out in Respondent's brief between the instant case (No. 84) and No. 313, Brotherhood of Railroad Trainmen, et al., v. Chicago River and Indiana Railroad Company, et al., no agreement can be entered into to abide by the decision in No. 313. From the facts now before the Court the case of Central of Georgia Railway Company vs. Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al. (No. 84), has become moot and Respondents respectfully request that certiorari proceedings be dismissed.

This matter is being brought to the attention of the court in this manner rather than by motion due to the time element, the case being set for argument this coming Monday, February 25, 1957. The writer may be reached, if necessary, at the Hotel Washington, Washington, D. C. from his arrival there this Saturday, February 23rd, at approximately 9:30 A.M. until convening of court on Monday.

Very truly yours,

Benning M. Grice

Benning M. Grice
Respondent's Attorney

BMG:pn

cc: Mr. John B. Miller
General Counsel, Central of Georgia Ry. Co.
P. O. Box 642
Savannah, Georgia

Mr. Wayland K. Sullivan
Assistant General Counsel
Brotherhood of Railroad Trainmen
Standard Building
Cleveland 13, Ohio

No. 84. CENTRAL OF GEORGIA RAILWAY CO. *v.* BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL. Certiorari, 352 U. S. 865, to the United States Court of Appeals for the Fifth Circuit. *Per Curiam:* Upon the suggestion of mootness the writ is dismissed on the ground that the cause is moot. *John B. Miller* for petitioner. *Benning M. Grice* and *Wayland K. Sullivan* for respondents. Reported below: 229 F. 2d 901.